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No. 9133

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

JAMES H. JORDAN, J. R. MASON, L. F. ABADIE, GEORGE F. COVELL, and FIRST NATIONAL BANK OF TUSTIN (a corporation),

Appellants,

vs.

PALO VERDE IRRIGATION DISTRICT, an Irrigation District,

Appellee.

APPELLANTS' OPENING BRIEF.

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JURISDICTIONAL FACTS.

This proceeding is a petition for composition of debts of the Palo Verde Irrigation District, an irrigation district, organized under the provisions of Stats. Cal. 1923, page 1067. The proceeding is purportedly authorized under the provision of Chapter IX of the Bankruptcy Act of 1898. (11 U. S. C. Sections 401-404.)

The jurisdiction of this Court in this appeal has been determined in an order made in this Court on June 28, 1939, denying motions to dismiss the appeal.

PLEADINGS.*

The petitioner herein filed its petition for composition of debts in the District Court May 13, 1938 (Tr. p. 39) whereupon an order for notice to creditors was given. (Tr. p. 40.) The appellants filed their proofs of claim (Tr. pp. 70 to 89) in due time. The appellants served and filed on July 6, 1938 (Tr. p. 70) their answer and objections to the petition for composition of debts, and the hearing on the plan of composition came on before the Court July 18, 1938 (Tr. p. 147) whereupon evidence was introduced and the cause was submitted, after objections made upon three fundamental grounds which are briefed herein. (Tr. p. 148.) The evidence consisted of a transcript of testimony taken before the Superior Court of Riverside County in a proceeding for readjustment of the debts of the petitioner under Cal. Stats. 1937, Ch. 24. The Court announced its decision; findings were submitted to the Court. The appellants in due time endorsed their disapproval and objections to the findings upon

*The appellants consider the following portions of the transcript of record as important for consideration of the appeal:

1. Petition. (Tr. p. 3.)
2. Answer and Objections. (Tr. p. 57.)
3. Findings. (Tr. p. 92.)
4. Objections to Findings. (Tr. p. 124.)
5. Decree. (Tr. p. 134.)
6. Plan of Composition. (Tr. p. 21.)
7. Proceedings of Trial. (Tr. pp. 147-150 and pp. 336-338.)
8. Petitioner's Exhibits. (Tr. pp. 153, 171, 174, 184, 201, 225, 236, 264, 270, 272, 273, 274.)
9. Respondents' Exhibits. (Tr. pp. 178, 242, 246, 292, 295, 315, 318, 150, 325.)
10. Testimony of Petitioner's Witness Faries. (Tr. p. 171.)
11. Testimony of Petitioner's Witness Malmgren. (Tr. p. 256.)
12. Testimony of Petitioner's Witness Meyer. (Tr. p. 152.)
13. Testimony of Petitioner's Witness Wagner. (Tr. p. 286.)
14. Testimony of Petitioner's Witness Williams. (Tr. pp. 184, 194.)
15. Stipulations. (Tr. pp. 193, 223.)
16. Minute Book Entries. (Tr. pp. 278-279.)
17. Stipulation. (Tr. pp. 295-307.)

the same (Tr. p. 92) which were overruled by the Court (Tr. p. 134) and the findings were entered on October 7, 1937, together with an interlocutory decree confirming the plan of composition. (Tr. pp. 124, 147.) Thereafter appellants took their appeal in due and proper form as determined by the order of this Court entered herein June 28, 1939.

STATEMENT OF FACTS.

About 1877 Samuel Blythe acquired about 40,000 acres along the Colorado River, which is now a part of Palo Verde Irrigation District. He obtained the first water right upon the Colorado River.[1]

In 1908 the Mutual Water Company was organized and this company, which was a private corporation, on February 1916 executed a deed of trust conveying its irrigation system to a bank, in trust, as security for the payment of coupon bonds of the company in the principal amount of $500,000 payable serially from 1921 to 1936 at 6% interest. $170,000 of these bonds are involved in this proceeding.

The Palo Verde Drainage District is a public corporation organized under the provisions of Cal. Stats. 1903, page 291 (Appendix p. 19), on August 16, 1921. This corporation on December 1, 1921, issued coupon bonds in the amount of $850,000 payable serially from 1933 to 1942 bearing 6% interest, all of which bonds

1. For the history of the Palo Verde Project see page 327, Bulletin 21, Department of Public Works of the State of California printed by California State Printing Office and introduced as an exhibit in this case (Tr. p. 256), and see also evidence by E. W. Williams. (Tr. p. 184.)

were subsequently sold and are involved in these proceedings.

The Palo Verde Joint Levee District of Riverside and Imperial Counties, California, was organized June 17, 1914, under the provisions of Stats. Cal. 1905, page 327. (Appendix p. 27.) This District constructed, operated and maintained a levee system along the Colorado. On May 1, 1918, the Levee District under authority of Stats. Cal. 1911, page 303, issued its first issue of coupon bonds in the principal amount of $1,253,951.86, payable serially from 1919 to 1958, bearing 6½% interest. On November 1, 1922, the Levee District issued a second issue of bonds in the principal amount of $371,378.50 payable serially from 1923 to 1962 with interest at 6½%. Of the first issue $911,951.86 principal of bonds and of the second $304,378.50 principal of bonds are involved in these proceedings.

Both the Drainage District and the Levee District (but not the Mutual Water Company) were public corporations and complete provisions for the annual levy and collection of unlimited assessments for payment of the bond issues were set forth in the respective acts, found in the Appendix.

The Palo Verde Irrigation District (sometimes herein referred to as the district) is an irrigation district organized under the provisions of a special act of the Legislature known as the "Palo Verde Irrigation District Act" being Stat. Cal. 1923, page 1067. (Appendix p. 34.) It embraced 95,000 acres of land,

the major part of which is situated in the County of Riverside. The office of the district is at Blythe.

This district was organized for the purpose of taking over the properties and in general the functions of the Levee District and the Drainage District and acquiring the properties of the Palo Verde Mutual Water Company. Relevant provisions of this act are found in the Appendix. Palo Verde Irrigation District under the act assumed the obligation of the bond issues of the two public corporations and of the one private corporation. Sections of the act 12 and 13 reserved to the bondholders the rights which they had under the former act. These sections declared that the Drainage District and the Levee District ceased to exist *"except insofar as may be necessary to preserve the rights of bondholders and other creditors; * * *."* The question of the extent of this right and its effect upon these proceedings is discussed hereafter in this brief.

The Palo Verde Irrigation District itself issued certain bonds. On September 1, 1925, it issued the first issue in the principal amount of $3,287,000, payable serially from 1937 to 1955 and issued a second issue of bonds of the same date in the amount of $213,000, payable serially from 1937 to 1955, both bond issues bearing 6% interest. All the bonds of the second issue were sold and of the first issue $1,725,000 were sold and substantially all of these issues which were sold are involved in these proceedings.

Of the foregoing bond issues the appellants own the following amounts, plus matured interest coupons:

L. F. Abadie, $15,000 principal Irrigation District bonds (unmatured);

George F. Covell, $10,000 principal Irrigation District bonds (due 1952);

James H. Jordan, $3000 (matured) Drainage District bonds; $18,000 (mostly matured) Levee District bonds; also $3380 coupons from bonds not owned by Jordan;

J. R. Mason, $13,000 Irrigation District (matured and unmatured) bonds; $14,000 Levee District bonds (matured and unmatured);

First National Bank of Tustin, $6000 Principal (matured).

In 1933 the district applied to the Reconstruction Finance Corporation (sometimes referred to herein as the R. F. C.) for a loan under Section 36 of the Emergency Farm Mortgage Act (Title 43, Section 403 U. S. C.) to enable it to reduce its debt. The loan was granted. (Tr. p. 201.) The electors of the district accepted the loan and voted refunding bonds. The bondholders deposited their bonds in escrow *"to or upon the order"* of the district. (Tr. p. 172.) The district *ordered* the surrendered bonds delivered to the R. F. C. (Tr. p. 179) and paid the expense of the escrow. The R. F. C. loaned and disbursed 24.81 cents on the dollar. That was all done even before the first bankruptcy petition was filed in 1935. The R. F. C. now claims to own these bonds. The appellants claim that they are fully liquidated, and that the R. F. C. has no other right than to the issuance and delivery of

new, refunding bonds representing the amount of the loan, at 24.81 cents.

On March 29, 1935, the Palo Verde Irrigation District filed a petition in the United States District Court for the Southern District of California for the adjustment of its debts under Section 80 of the Bankruptcy Act of 1898. Those proceedings involved these same appellants and their same claims, and the same bond issues, and therein the district sought confirmation of a plan of readjustment of its debts substantially the same as the present. (See Tr. p. 295 for stipulation concerning these facts.) The bankruptcy petition was contested by these appellants and the bankruptcy petition referred to actions of these appellants which were then pending and are still pending against the district for enforcement of certain rights of these appellants. Upon the filing of the bankruptcy petition a restraining order was issued restraining the prosecution of these actions. The cause came on for trial and was tried on the merits and submitted. On December 8, 1936, the United States District Judge entered a dismissal of the cause on the grounds of unconstitutionality. (Tr. p. 298.) Subsequently the Palo Verde Irrigation District appealed from the order of dismissal to this, the Circuit Court of Appeals. The appeal was dismissed.

Thereafter the appellants, except Covell, on the 29th day of December, 1936, obtained an Alternative Writ of Mandate, from the Superior Court of Riverside County (Tr. p. 305) directed to the Palo Verde Irrigation District and its officers and the depositary of the district, directing them to pay appellants' claims

on their matured bonds and coupons prior to any payment of interest to the R. F. C.

Thereafter the Palo Verde Irrigation District, in April, 1937, filed a "Petition for Readjustment of Debts" under the Irrigation District Refinancing Act (Appendix p. 1) for readjustment of its debts and set forth substantially the same plan as is here involved. (Tr. p. 325.) This case went to trial before the Superior Court of Riverside County in November, 1937, and resulted in a decision in favor of the district in April, 1938. On the same day that the Superior Court handed down its opinion the United States Supreme Court announced its decision in the *Bekins* case, holding that the present Chapter IX of the Bankruptcy Act is constitutional. Whereupon on May 13, 1938, the district filed its petition in bankruptcy in the United States District Court; and subsequently made a motion to dismiss the bankruptcy proceedings pending in the State Court under the Irrigation District Refinancing Act. The question of the dismissal of these proceedings is now on appeal in the State Supreme Court (Tr. p. 149) but prosecution of the appeal is enjoined by these proceedings.

The plan of composition has been substantially the same in all of these cases. It is set forth on page 21 of the transcript and provides for payment of 24.81 cents per dollar of principal of the bonds and nothing for interest. At the option of the district, refunding bonds may be delivered to the appellants. In the main, it is proposed to deliver (refunding) bonds to the R. F. C. and pay 24 cents in cash to the appellants.

NATURE OF LIABILITY UNDER APPELLANTS' BONDS.

The nature of the functions of the petitioner district is discussed in the argument, but a word should be said as to the nature of the obligation under the bonds. The bonds of each of the three public agencies are general obligations. Their nature as such is discussed in the case of *Judith Basin v. Malott,* 73 Fed. (2d) 142. In effect these bonds are a *senior* claim; mortgages and deeds of trust are junior.

The same interests that have repeatedly sought to destroy similar public bonds as in the case of *Malott* and in the *Roberts v. Richland Irrigation District* case (289 U. S. 71, 53 S. Ct. 519) now again seek by a new and different method to destroy them.

THE QUESTIONS INVOLVED.

When the cause came on for hearing before the District Judge objections to the introduction of any evidence were made (Tr. p. 148) on the grounds that as shown by the facts admitted (1) There was a proceeding pending in insolvency under the state law; (2) The cause was *res judicata;* (3) The plan had been carried out, out of Court. This objection was overruled.

The cause was tried and decision rendered. Objections to the findings were disallowed. (Tr. p. 124.) The decree was entered and the appeal raises matters of fact and of law improperly determined by the Court.

SUMMARY OF ARGUMENT.

The interlocutory decree confirming the plan of composition herein should be reversed because:

1. The District Court was without jurisdiction to enter its decree touching the governmental and fiscal affairs of the Palo Verde Irrigation District, by the terms of Chapter IX;

2. The pendency of the insolvency proceeding under Cal. Stats. 1937, Chapter 24, was a bar to these proceedings;

3. The cause is *res judicata;*

4. The R. F. C. is not a creditor affected by the plan and cannot vote upon the proposition;

5. The plan had already been consummated long prior to the filing of the petition;

6. The judge failed to classify the creditors properly;

7. The plan is grossly unfair and inequitable;

8. The plan is not proposed in good faith;

9. The State of California is the owner of the assets and may not repudiate its public debts, nor can the district, a public trustee, take bankruptcy;

10. Trust funds and property are unlawfully taken by the proceeding;

11. The liability of juristic persons not before the Court is unlawfully voided;

12. The District is not authorized by law to carry out the plan.

13. The State of California cannot under its own Constitution consent or be a party to these proceedings;

14. Chapter IX is unconstitutional as applied in these proceedings.

ARGUMENT AND AUTHORITIES.

FIRST PROPOSITION: BY THE TERMS OF THE STATUTE THE COURT WAS WITHOUT JURISDICTION.

Assignment of Error No. 34 is as follows:

> "The court erred in not holding that Palo Verde Irrigation District is a political subdivision created for the purpose of exercising and exercising powers of sovereignty conferred upon said district by the laws of the State of California to carry out public governmental purposes, and it erred in holding that the confirmation of said plan of debt readjustment was not a void and illegal interference with the exercise of said sovereign powers so conferred upon said district."
>
> (Tr. p. 348.)

Assignment of Error No. 2 is as follows:

> "The court erred in overruling objections of appellants to the jurisdiction of the court and to the introduction of evidence under the petition."
>
> (Tr. p. 341.)

It is respectfully suggested that the trial Court was wholly lacking in jurisdiction. The petitioner being exclusively governmental in nature seems to be en-

tirely excluded by the terms of the act under which these proceedings were prosecuted.

In Section 83 (c) of the Bankruptcy Act, which is Section 403, Title 11, U. S. C., after stating that the Court may enjoin proceedings and put the plan temporarily into effect, it is provided:

> "* * * but shall not, by any order or decree, in the proceeding or otherwise, interfere with (a) any of the political or governmental powers of the petitioner; * * *"

To make doubly sure that the political or governmental affairs of the State were not to be interfered with, Congress inserted in the Act subdivision (i) of the same section (83) which reads as follows:

> "(i) Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures therefor."

Then further, to guard against the Act failing entirely because some petitioner might be a governmental agent Congress inserted:

> "* * * That if any provision of this chapter, or the application thereof to any such taxing agency or district or class thereof or to any circumstance, is held invalid, the remainder of the chapter, or the application of such provision to any other or different taxing agency or district or class thereof or to any other or different circumstances, shall not be effected by such holding."
>
> (Tit. 11, Sec. 401, U. S. C.)

Subdivision (c) 11 of the old Section 80 is as follows:

> "* * * but (11) shall not, by any order or decree, in the proceeding or otherwise, interfere with (a) any of the political or governmental powers of the taxing district. * * *"

The similarity between subdivision (c) 11 of Section 80 and subdivision (c) of Section 83 above quoted is at once striking. Indeed they are identical with one exception. The last two words of the old act are "taxing district" and the last word of the new act is "petitioner". This difference may be more important than it at first appears. The Court held the old act unconstitutional in the *Ashton* case (*Ashton v. Cameron County Water Improvement Dist. No. 1,* 298 U. S. 513).

The basis of the decision in the *Ashton* case may be stated in two or three rather short quotations from that opinion where the Court said (531):

> "If obligations of States or their political subdivisions may be subjected to the interference here attempted, they are no longer free to manage their own affairs; the will of Congress prevails over them; although inhibited, the right to tax might be less sinister. And really the sovereignty of the State, so often declared necessary to the federal system, does not exist."

And again:

> "The constitution was careful to provide that 'no State shall * * * pass any * * * Law impairing the Obligation of Contracts'." "This she may not do under the form of a bankruptcy act or otherwise."

(Authority.) "Nor do we think she can accomplish the same end by granting any permission necessary to enable Congress so to do.

"Neither consent nor submission by the states can enlarge the powers of Congress; none can exist except those which are granted." (Authority.) "The sovereignty of the state essential to its proper functioning under the Federal Constitution cannot be surrendered; it cannot be taken away by any form of legislation."

The new act, so far as the constitutional question is concerned, was approved in the *Bekins* case (*U. S. v. Bekins,* 304 U. S. 27). After quoting at some little length from the report of the Judiciary Committee of the House, which comimttee report we will presently refer to, Mr. Chief Justice Hughes stated (51):

"We are of the opinion that the Committee's points are well taken and that chapter 10 is a valid enactment. The Statute is carefully drawn so as not to impinge upon the sovereignty of the State."

It will be observed that the Court in the *Bekins* case does not assent to the proposition that the sovereignty of the State may be impinged upon.

The material differences between the two statutes, if any there be, are elusive in the extreme. The *Ashton* case held the act void. The *Bekins* case holds a very similar act valid. One of two things, therefore, seems certain. The Court in the *Bekins* case must have either found some material difference between the old and the new statutes, even though slight it may be, which clears away the difficulties found in the old statute, or the *Ashton* case is actually over-

ruled. If the *Bekins* overrules the *Ashton* case, and it is certain that it does in some respects, such as, for instance, State consent, then the plea in this case of *res judicata* would seem to be perfectly good, but that is another point which we are not here discussing, but will presently discuss.

The Court in the *Bekins* case (50), referring to the *Ashton* case and its holdings in that case, stated:

> "* * * that if obligations of States or their political subdivisions might be subjected to the interference contemplated by Chapter IX, they would no longer be 'free to manage their own affairs'. In enacting Chapter X the Congress was especially solicitous to afford no ground for this objection."

The Court does not give us the differences between the two acts or wherein the solicitation of Congress has removed the objection found in the *Ashton* case, but unless the Court actually overruled the *Ashton* case, it must have found some difference upon this particular point and that difference may be as between the words "petitioner" set out above from Sec. 83(c) and the words "taxing district", set out above from Sec. 80(c) (11). And we can see some little difference between those terms.

In the old Act the term "taxing district" was defined as,

> "any municipality or other political subdivision of any State, including (but not hereby limiting the generality of the foregoing) any county * * *" etc.

including irrigation districts.

Now, the Court in the *Ashton* case held the old act void. The respondent in that case was a water improvement district exactly similar to an irrigation district. The Court said:

> "If Federal Bankruptcy laws can be extended to respondent, why not to the State?"

It will be remembered that in the old act the respondent was defined as a political subdivision. Again in the same decision the Court said: (527)

> "It is plain enough that respondent is a political subdivision of the State, created for the local exercise of her sovereign powers, and that the right to borrow money is essential to its operations * * * Its fiscal affairs are those of the State, not subject to control or interference by the national government, unless the right so to do is definitely accorded by the Federal Constitution."

Now we turn to the new act, the one construed in the *Bekins* case, and we find the term "petitioner" defined in Section 82 as "any taxing agency or instrumentality referred to in Section 81 of this Chapter."

When we look at Section 81 we find that irrigation districts and numerous other agencies are named by name but they are not defined as political subdivisions, and at the end of Section 81 we find this very significant language, already quoted above:

> "Provided, however, that if any provision of this chapter, or the application thereof to any such taxing agency or district or class thereof or to any circumstance, is held invalid, the remainder of the

> chapter, or the application of such provision to any other or different taxing agency or district or class thereof or to any other or different circumstances, shall not be affected by such holding."

The *Ashton* case had held old Chapter IX to be void because it permitted interference with the governmental sovereignty of the State. The *Bekins* case seems to hold that the governmental interference has been avoided in the new statute, at least so far as its general constitutionality is concerned.

When we turn to the new statute we find that Congress has named a great number of agencies, and, not being sure but that some of these agencies may be strictly governmental and thus fall into the category condemned in the *Ashton* case, it provides at the end of Section 81 as above quoted and proceeds to at least attempt to save the act as to those which do not fall within the class which Congress has no power to interfere with.

Since all of the agencies in the old act, by definition of Congress, fell within the sovereign governmental class the old act was condemned. Now, since it is possible that some or perhaps a large number of the agencies named in the new act would not come within that class, the act as a whole is not condemned, and it is not condemned as to the particular agency before the Court, because the Courts of California had not held such agencies to be strictly governmental. This seems to be a reasonable construction to place upon the *Bekins* decision, and indeed seems to be about the only

way that it can be explained without reaching the conclusion that the *Ashton* case is actually overruled.

This construction seems to be borne out further by the decision in the *Bekins* case where the Court quotes with approval from the report of the Judiciary Committee of the House and states: (51)

> " 'The bill here recommended for passage expressly avoids any restriction on the powers of the States or their arms of government in the exercise of their sovereign rights and duties. *No interference with the fiscal or governmental affairs of a political subdivision is permitted.* * * * No involuntary proceedings are allowable, and no control or jurisdiction over that property and those revenues of the petitioning agency *necessary for essential governmental purposes is conferred by the bill.*' " (Italics supplied.)

Now, the committee of Congress apparently had this very point in mind, namely, that it could not pass an act that would apply to a state or to any strictly governmental agent of the state but only to those agencies that exercised private or proprietary functions. Congress seemed to recognize that the first act had failed largely because, if not entirely because, it applied entirely, by definition, to municipalities and political subdivisions which exercise governmental or sovereign powers. In the new act it tried to avoid that difficulty by withholding jurisdiction from the Court to deal with those agencies which are strictly governmental and the governmental functions of the agencies which may be partly governmental and partly proprietary.

We now come to a consideration of the nature of an irrigation district in California.

It is not important on this particular point whether the *Ashton* case was actually overruled or not. Congress in the very act under which such jurisdiction as the Court could exercise was conferred, expressly provided that no order could be made that would interfere with any of the political or governmental powers of the petitioner. It becomes important therefore to ascertain whether or not the petitioner has any powers which the Court had the right, by its order, to interfere with. Clearly the power of the Court is limited by this provision and if it should be found that every power and function of the petitioner is governmental then the proceeding would have to end right there as it would be perfectly idle for the Court to go through the processes but without any authority to make any order or decree.

For many years the exact nature of an irrigation district has been a subject of judicial concern. That question has been definitely crystalized in California, so far as California irrigation districts are concerned, since the decision in the *Bekins* case.

In the case of *El Camino Irrigation District v. El Camino Land Company,* 96 C. D. 505, 508, the Court states:

> "But the cases make a sharp distinction between municipal corporations, such as the cities in the Kuback Co. and Marin Water and Power Co. cases, and state agencies such as irrigation or reclamation districts. These latter are agencies

of the state whose functions are considered exclusively governmental; their property is state owned, held only for governmental purposes; they own no land in the proprietary sense, within the rule of defendant's cases. (See Whiteman v. Anderson-Cottonwood Irrigation District, 60 Cal. App. 234; Turlock Irrigation District v. White, 186 Cal. 183, 187; Wood v. Imperial Irrigation District, 216 Cal. 748, 752.) Once it is established that the property is owned by the state or its agency, rather than by a municipal corporation, the rule of the Kuback Co. case becomes inapplicable. 'Our attention has been called to no act, and we have been unable to find any act of the legislature authorizing state property to be sold upon execution, whether such property is used either in a governmental or in a proprietary character. The purpose or capacity in which state property is held does not, so far as we have been able to ascertain, alter the rule that state property cannot be levied upon and sold, save and except as permitted by the legislature, and not being permitted, it cannot be done.' (Meyer v. State Land Settlement Board, supra, at p. 586.)

(4) There is another and conclusive answer to the contention of defendants, found in the terms of the Irrigation District Act. Section 29 of the act (Gen. Laws 1931, Act 3854) declares that property acquired by the district shall be held 'in *trust* for, and is hereby *dedicated* and set apart to the *uses and purposes set forth in this act'*. We have discussed the meaning and effect of this section in Provident Land Corporation v. Zumwalt, supra, and it is sufficient to point out here that the statute places these tax-deeded lands in a classification which necessarily makes them exempt from execution."

The still more recent case decided by the Supreme Court of California is that of *Anderson-Cottonwood Irrigation District v. Klukkert, as Assessor,* 97 C. D. 348. In the *Anderson-Cottonwood* case the district had taken over a good deal of land through its assessment proceedings and the County Assessor was threatening to assess these lands for county tax purposes and the proceeding was one to prohibit such an assessment. The Court reviewed the authorities at some length and said:

> "Irrespective of that which hereinbefore has been stated with respect to the rule that under a constitutional provision exempting state-owned property from taxation it is immaterial whether the property is held in a proprietary or a governmental capacity, it does not appear that the lands here involved are nonoperative, within the meaning contended for by respondents. In the recent case entitled El Camino Irrigation District v. El Camino Land Corporation et al., 96 Cal. Dec. 505, at pp. 508, 509, this court held that an irrigation district was an agency of the state, whose functions were considered exclusively governmental; that it owns no lands in a proprietary sense, its property being owned by the state and held only for governmental purposes. The court pointed out that under section 29 of the Irrigation District Act (Deering's Gen. Laws (1931), Act 3854, p. 1948) it was provided that property acquired by the district should be held 'in trust for', and was 'dedicated and set apart to the uses and purposes' set forth in the act. (See, also, Clough v. Compton-Delevan Irrigation District et al., 96 Cal. Dec. 509, 511; Moody v. Provident Irrigation District, 96 Cal. Dec. 512, 515.) Also, in the recent

case entitled Provident Land Corporation v. Zumwalt et al., 96 Cal. Dec. 497, where the economic history of irrigation districts in this state was reviewed at some length, it was held that lands acquired by the district under the provisions of the Irrigation District Act remain in trust, and that their proceeds, whether by sale or lease, were likewise subject to the trust."

A still more recent case is that of *Glenn-Colusa Irrigation District v. The Board of Supervisors of Colusa County,* 96 C. A. D. 882. In that case the irrigation district had in a warehouse, a certain amount of grain that had been taken as rental for tax deeded lands held by the district. The county assessed the grain, the district applied to the Board of Supervisors to cancel the assessment, which was refused, and an application was made to the Court for an order compelling the cancellation of the assessment. The assessment was cancelled on the ground that the district owned no property in any proprietary sense but wholly in a governmental sense and was not subject to taxation.

Now the law in California is no different today than it has always been. Our Courts have simply told us, what it has long suggested, what the law is, in relation to the nature of an irrigation district and that is, that it being purely a creature of the state for state purposes, all the functions of such a district are governmental.

Congress has stated that the Court shall not by any order or decree in the proceeding or otherwise interfere with any of the political or governmental powers

of petitioner. If all of the powers and functions of the petitioner are governmental then it would seem too clear for argument that the Court could make no valid order or decree in these proceedings.

It may be argued that no order or decree contemplated in these proceedings would *interfere* with any of the functions of the district. The slightest reflection demonstrates that such is not the case. One of the functions of the district is to borrow money and issue bonds. Another function enjoined by law and for the enforcement of which mandamus will lie is the levying of assessments to pay the bonds in full according to their terms. Whereas, now mandamus will lie to require the levy of such an assessment, after the order in this proceeding is final, an injunction will lie to prohibit such an assessment. The whole purpose of the proceeding is to change the fiscal affairs of the district. After that change has been made the district will have no power to proceed on the old basis but will be required to proceed upon the new basis.

In the *Bekins* case Mr. Chief Justice Hughes in referring to the *Ashton* case said,

> "* * * the court considered that the provisions of Chapter IX authorizing the bankruptcy court to entertain proceedings for the 'readjustment of the debts' of 'political subdivisions' of a State 'might materially restrict its control over its fiscal affairs', and was therefore invalid; that if obligations of States or their political subdivisions might be subjected to the *interference* contemplated by Chapter IX they would no longer be 'free to manage their own affairs'." (Italics supplied.)

Now, we have the *Bekins* case overruling the *Ashton* case or finding something in the new act that saves the governmental or sovereign functions of the petitioner from the effects of the new act and we have our own state Court holding flatly and unequivocally that every function of the irrigation district is a governmental function and that it owns no property of its own but the property which stands in its name is the property of the state and is used for governmental purposes and impressed with a trust for that purpose and is neither subject to execution nor taxation and we find the act under which these proceedings are pending expressly prohibiting the Court from making any order or decree that will interfere with the political or governmental functions of petitioner and we find that no order or decree could be made that would not interfere with one or more of these governmental functions. So it would appear that there is only one possible basis left upon which the Court could exercise any jurisdiction in these proceedings and that is for the Court to take the position that the Federal Court is not bound by the State Court decisions and that actually these great sovereign functions of taxation which are exercised by the petitioner and which will be directly affected by the decree in this proceeding and will have to be exercised in the future in accordance with such decree are, after all, not governmental at all but are in the nature of private functions. Prior to the *Tompkins* case (*Tompkins v. Erie Railroad Company,* 304 U. S. 64), the Court might, upon one theory, have done that, but the Supreme Court in the *Tompkins* case held that on questions of general or common law

United States Courts are bound by the decisions of the State. In the *Tompkins* case the Court said:

> "Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State. And whether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern. There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a State whether they be local in their nature or 'general', be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts. As stated by Mr. Justice Field when protesting in Baltimore & O. R. Co. v. Baugh, 149 U. S. 368, 401, 37 L. ed. 772, 786, 13 S. Ct. 914, against ignoring the Ohio common law of fellow servant liability: 'I am aware that what has been termed the general law of the country—which is often little less than what the judge advancing the doctrine thinks at the time should be the general law on a particular subject—has been often advanced in judicial opinions of this court to control a conflicting law of a state. I admit that learned judges have fallen into the habit of repeating this doctrine as a convenient mode of brushing aside the law of a State in conflict with their views. And I confess that, moved and governed by the authority of the great names of those judges, I have, myself, in many instances, unhesitatingly and confidently, but I think now erroneously, repeated the same doctrine. But, notwithstanding the great names which may be cited in favor of the doctrine, and notwithstanding the frequency with which the

doctrine has been reiterated, there stands, as a perpetual protest against its repetition, the constitution of the United States, which recognizes and preserves the autonomy and independence of the States—independence in their legislative and independence in their judicial departments. Supervision over either the legislative or the judicial action of the States is in no case permissible except as to matters by the Constitution specially authorized or delegated to the United States. Any interference with either, except as thus permitted, is an invasion of the authority of the State, and, to that extent, a denial of its independence.' "

Section 34 of the Judicial Code, Title 28, Section 725 U. S. C. A. provides:

"The laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply."

Of course it is true here we are not dealing with an action at common law but we are dealing with one dependent purely upon statute. The irrigation district is a creature of statute and the highest Court of the state that brought the district into existence, has interpreted its charter. That interpretation is laid beside the act of Congress and by that act the district is apparently excluded from its operation.

It has been a general rule of construction since the earliest time that the United States Courts will follow the State Court in a construction of a state statute or a state constitutional provision.

In *Town of South Ottawa v. Perkins,* 94 U. S. 260, 267, the Court said:

> "And this court has always held that the laws of the States are to receive their authoritative construction from the State Courts, except where the Federal Constitution and laws are concerned; and the State Constitutions, in like manner, are to be construed as the State Courts construe them. This has been so often laid down as the proper rule, and is in itself so obviously correct, that it is unnecessary to refer to the authorities."

The recent California Supreme Court decisions above cited, are but crystalizations, as it were, of the older cases on the same points. Those cases are reviewed to some extent in the *Anderson-Cottonwood* case and it would seem that even in the absence of the *Tompkins* case the United States Courts would be bound by the state decisions as to the nature of an irrigation district. If it is in the nature of a statutory construction then the Court would be bound by the decision and since the *Tompkins* case, if the nature of such a district should be determined upon what is referred to as general law, the United States Courts would also be bound by the State Court decisions.

The position above discussed is greatly strengthened by Subdivision (i) of Section 83 where it is stated:

> "Nothing contained in this chapter shall be construed to limit or impair the power of any State to control, by legislation or otherwise, any municipality or any political subdivision of or in such State in the exercise of its political or governmental powers, including expenditures therefor."

Now, there are just two ways, with which we are familiar, by which the state may control anything. First, is by legislation and second is by judicial construction. In these proceedings we have pleaded another action pending under a state law. The legislature of the state passed what is referred to as the Irrigation District Refinancing Act. (1937 Stats. p. 92.) That act sets up machinery for accomplishing substantially the same thing that the bankruptcy statute purports to authorize. This district proceeded under that statute and the action is still pending. That statute has not been repealed. So the legislature has itself stepped in and set up procedure for accomplishing a similar purpose and to that extent has undertaken the control of these agencies. That subject, however, we will discuss under another heading. The Courts of the state have determined that the functions of an irrigation district are exclusively governmental. If those decisions were perfectly new and actually inconsistent with prior decisions, still under the act under which this proceeding is prosecuted the interpretation of the State Courts would prevail, because, among other reasons, Congress has expressly said that nothing contained in the chapter "shall be construed to limit or impair the power of the state to control by legislation *or otherwise.*" (Italics supplied.)

Since Congress itself has expressly provided that the Court is without power to make any order or decree interferring with the political or governmental powers of the petitioner it would seem that the Court was entirely without jurisdiction to make any order or decree in these proceedings.

Apparently this same point was raised in the case of *George E. W. Luehrmann, et. al. v. Drainage District No. 7 of Poinsett County, Arkansas,* decided June 13, 1939, by the Circuit Court of Appeals for the Eighth Circuit (not reported at time this brief is written.) In that case the Court said:

> "A former Act (May 24, 1934) permitting municipal corporations and other political subdivisions of states, unable to pay their debts as they mature, to resort to the federal courts of bankruptcy to effect readjustment of obligations, was before the Supreme Court in Ashton v. Cameron County Water Improvement District No. 1, 298 U. S. 573. It was there held that the power claimed in support of the Act, as applied to the district organized to permit water for irrigation and domestic purposes, having power to sue and be sued, issue bonds, and levy and collect taxes, was unconstitutional, as restricting the states in the control of their fiscal affairs. The appellant district there was held to be a political subdivision of the state.
>
> The Act of August 16, 1937, under which this proceeding was brought, undertakes to meet the constitutional weakness of the former Act by the following provision:
>
> > 'That if any provision of this chapter, or the application thereof to any such taxing agency or district or class thereof or to any circumstance, is held invalid, the remainder of the chapter, or the application of such provision to any other or different taxing agency or district or class thereof or to any other or different circumstances, shall not be affected by such holding.'
> >
> > (11 U. S. C. A. 1222, 1223, sec. 401.)

In Drainage District No. 2 of Crittenden County, Arkansas v. Mercantile-Commerce Bank & Trust Company, 69 F. (2) 138, this court held that an Arkansas Drainage District is *not a governmental agency* as respects the question of whether the district is subject to equity jurisdiction. This ruling is based upon the decisions of the Supreme Court of Arkansas holding that drainage districts are quasi-public corporations which are not political or civil divisions of the state like counties and municipal corporations created to aid in the general administration of the government. They are not created for political purposes, nor for the administration of the government. *Appellants do not contend* that the petitioner falls within the limitation upon the power springing from this amendment to the Bankruptcy Act, which limitation was declared in the Ashton case * * * It appears further that unless and until that composition is effected, the district is hopelessly insolvent, and that the Act of August 16, 1937 is valid as applied to this drainage district, *which is not a governmental agency.*" (Italics supplied.)

SECOND PROPOSITION: THERE IS ANOTHER ACTION PENDING IN THE STATE COURTS OF CALIFORNIA UPON THE SAME IDENTICAL CAUSE OF ACTION AND DEMANDING SUBSTANTIALLY THE SAME RELIEF, AND THAT THAT ACTION WAS COMMENCED AND PENDING UNDER STATE LAW PRIOR TO THE PASSING OF CHAPTER X OF THE BANKRUPTCY ACT UPON WHICH THIS PROCEEDING WAS PROSECUTED.

Assignment of error No. 29 is as follows:

"The court erred in not holding this proceeding barred because there was and now is a proceeding

by petitioner pending under California Statutes of 1937, Chapter 24, for the same relief asked for herein, and which said statute is a bankruptcy statute." (Tr. p. 347.)

We are very serious in presenting this point as we feel confident that the pending action in the State Court is entirely fatal to the prosecution of this action here.

In March, 1937, there was passed by the California Legislature as an urgency measure, which took effect upon its passage, an act designated "Irrigation District Refinancing Act" (1937 Stat. p. 92). (Said act being set out in the appendix, p. 1.)

Briefly that act provides that any irrigation district being unable to pay its debts as they mature, such debts may be liquidated, refinanced or readjusted as therein provided. Such a proceeding is initiated by the Board of Directors of the district who shall adopt a plan. The plan must be concurred in by two-thirds in principal amount of the holders of each class of security effected thereby. The plan shall be presented to the California Districts Securities Commission and if found to be fair and equitable to the creditors the Commission shall approve the same and the Board of Directors is then authorized to file in the Superior Court in the county in which the district or the major part thereof is located, a verified petition stating that the district is unable to meet such obligations as they mature; that it desires to effect the plan adopted and that it has been accepted by a sufficient number of

creditors, and the district desires to avail itself of the act. The act provides that after the petition is filed the plan shall temporarily be in effect and that the filing of the petition shall automatically enjoin and stay, pending final determination of the proceedings as therein set forth, the commencement or continuance of proceedings or suit against the district or any officer thereof and shall enjoin and stay the enforcement of any lien or the levy of assessments except as is consistent with and in furtherance of the plan and that the Court in which the petition is filed shall have *exclusive jurisdiction* with respect to all suits, actions and proceedings against the district on account of the indebtedness effected.

It is then provided in the act that 90 days' notice of hearing be given and that thirty days' notice be personally served upon all known holders of bonds and warrants affected by the plan and at any time prior to the hearing any creditor affected by the plan may file an answer; that changes or modifications may be made, and the Court, if it finds the plan to be fair and equitable and that it complies with the provisions of the act and has been accepted in writing by the required number of creditors and the offer of acceptance are in good faith and that the district is authorized to take the necessary action to carry out the plan, shall make an interlocutory judgment approving the plan.

The case is then continued for the purpose of determining the value of the evidences of indebtedness which value will be fixed by a jury in the nature of condemnation proceeding.

We have not attempted of course to make any complete or comprehensive analysis of the state refinancing act. We only point out a few portions of the act for the purpose of showing that a proceeding under that act is necessarily in the nature of an insolvency proceeding. It cannot be otherwise regardless of what it may be called. A proceeding under that act can only be initiated when the district has been in default for not less than three years or unable to pay its debts as they mature.

There is just one other provision of the act to which we wish to particularly direct the Court's attention. That is Section 19.

Section 19 of the act has a rather startling legislative declaration which shows how completely the State Court has and maintains jurisdiction. We quote the following excerpt from Section 19:

> "In the event that said petition for liquidation, refinancing or readjustment is dismissed, or that any of the provisions hereof for confirmation of the plan or acquisition of the bonds or warrants of the nonaccepting holders shall be declared invalid, such dismissal or declaration shall not affect the effectiveness of the plan with respect to the district or holders of bonds or warrants accepting the same."

In other words, by this section it appears that the legislature intended that when a plan has been adopted and has been accepted by the requisite number of creditors that no matter what may happen thereafter in that proceeding the plan is in effect and both the dis-

trict and the accepting creditors are bound by it. If that be the case, then the so-called dismissal by the district has not changed the situation in the least, even if it be conceded to have been a proper dismissal. In addition to that, the whole proceeding is determined in the State Court once that Court has acquired jurisdiction. And still that is not all. When the matter is finally terminated in the State Court, no matter by what method, the plan has been fully consummated as far as the district and accepting creditors are concerned.

It will be recalled that the petition of the district under the state act was filed in the State Court at Riverside in April, 1937 (Tr. p. 148), and the bankruptcy act under which the district is now attempting to proceed in this Court was not passed by the Congress until August of the same year. These dates are all important.

These appellants took the position at the time the action was filed in the State Court and has continued to hold that position that the state act is unconstitutional, but neither the appellee nor the Court in which the action was pending has agreed with respondents in that respect, and the petitioner and the Court, over the protest of the respondents, continued to the point where judgment was ordered in favor of the petitioner. (Tr. p. 148.) Of course the very strong presumption is that the act is constitutional, and the constitutional question cannot be here discussed as it is entirely collateral to this proceeding.

It cannot be argued that the State Court had not yet acquired jurisdiction at the time the federal act was passed. A demurrer to the petition in the State Court was filed in May, 1937, and was argued and overruled by the Court on or about the 7th of June, 1937. The primary point raised by the demurrer was the constitutionality of the act. At the same time the demurrer was presented the respondents presented a motion to strike the petition from the files on the ground that the Court was without jurisdiction for the reason that the state act was unconstitutional. That motion was denied. Some of the respondents here had certain actions pending against the district in the State Courts at the time the petition in the State Court was filed (Tr. pp. 299-307), and when that petition was filed the Court refused to go further in those actions because of the restraining provisions contained in Section 5 of the state act.

So it is clear that if the Court did not assume jurisdiction at the moment the petition was filed, which is no doubt the case, it certainly did assume and exercise jurisdiction under the state act and under the petition filed pursuant thereto several months before the passage of the bankruptcy act here invoked.

It is also extremely interesting to note that neither the petitioner (respondent here) nor the State Court seemed to regard the federal act as in any manner affecting the right or jurisdiction of the State Court to proceed. The federal act was passed in August, 1937. Notwithstanding that act, the petitioner brought its state action under the state act to trial in Novem-

ber, 1937, and several days of trial and argument took place (see Pet. Ex. 1, Tr. p. 150), and it was as late as April 23, 1938, that the State Court ordered judgment entered in the state action under the state act as prayed for by the petitioner. It was not until the Supreme Court of the United States had passed upon the new bankruptcy act that petitioner decided to abandon the state proceeding and go to the Bankruptcy Court. That cannot be done. The petitioner elected to proceed under the state act in the State Court and it must stay with that proceeding at least until there is a finality to that proceeding. That point has not been reached.

It will be recalled that these respondents were brought into the Bankruptcy Court under Chapter IX of the bankruptcy act back in 1935 (Tr. p. 295) and the action was tried, over the protest of these respondents. After Chapter IX was held unconstitutional by the Supreme Court the District Court dismissed that proceeding. (Tr. p. 298.) Then the petitioner went into the State Court and these respondents were again forced to defend themselves in a long tedious proceeding. Now they are asked to abandon that proceeding and go back to the Bankruptcy Court to do it all over again.

After an action has been tried in the State Court it cannot be dismissed by the plaintiff without the consent of the defendant. (C.C.P. Sec. 581.)

If the State Court had jurisdiction in April, or June, or November, 1937, it still has jurisdiction. Nothing has happened in the meantime to change that situation. The respondents did not raise the question

of jurisdiction in the state as between the State Court and the Federal Court based upon the Bankruptcy Act for the simple reason that the point would not have been well taken. For several months prior to the trial of the state action Chapter X of the Bankruptcy Act was on the books. If the passing of the bankruptcy statute superseded the state act concerning an action that was then pending it would have been a conclusive defense in the State Court, but that is not the case. The law seems to be well settled that where the proceeding is pending under a state act at or prior to the time of the passage of the Bankruptcy Statute, the State Court continues to have jurisdiction under the state act until that proceeding is finally determined. No new proceeding can be commenced in the State Court but the pending proceeding is unaffected. If that is the law, and it clearly seems to be, then for the District Court to proceed in this proceeding meant that two courts in two separate jurisdictions were proceeding at the same time to occupy the same field in administering the same estate. It would seem to require no citation of authorities or no extended argument to demonstrate that such a situation could not be permitted to exist.

If it should be considered that both the District Court and the State Court had concurrent jurisdiction then the law is perfectly well settled that the moving party is put to his election as to which Court's jurisdiction he will invoke and the one first invoked has exclusive jurisdiction from then on. (15 C. J. 1131.) The situation that exists here, however, is not one of concurrent jurisdiction but one in which the

Federal Court had no jurisdiction over those matters that were pending in the State Court for a similar purpose at the time the Bankruptcy Act was passed. If the act under which the State Court is acting is constitutional, then clearly the State Court at Riverside had and still has jurisdiction of that proceeding. The State Court passed upon the constitutionality of the act and held the act to be valid. This Court will not go into a consideration of that question as such consideration would be wholly collateral to the present proceeding, but this Court will rest upon the presumption, first, that the act is constitutional, and secondly, that the order of the State Court holding it to be constitutional is a valid order.

A STATE PROCEEDING PENDING UNDER AN INSOLVENCY LAW OF THE STATE AT THE TIME OF THE PASSAGE OF A BANKRUPTCY ACT IS UNAFFECTED BY THE PASSAGE OF SUCH ACT.

The foregoing proposition seems to have been uniformly held to be the law. While there are not a great number of authorities on the point, one way or the other, after a considerable search we have found none denying the above proposition, but we find a number of authorities supporting it.

Several authorities are collected in a note in 45 L. R. A., at page 187, supporting the following statements of the author of that note, where he says:

> "Proceedings under State insolvency laws pending at the time of the passage of a bankrupt act are not affected by the latter act."

Mr. Justice Story is quoted from in the case of *Larrabee v. Talbott,* 5 Gill (Maryland) 426, 46 Amer. Dec. 637, as follows:

"That as soon as the bankrupt act went into operation, in February, 1842, it ipso facto suspended all action on future cases, arising under the state insolvent law, where the insolvent persons were within the purview of the bankrupt act. I say future cases, because very different consideration would or might apply, where proceedings under any state insolvent laws were commenced, and were in progress before the bankrupt act went into operation, * * *"

In *Martin v. Berry,* 37 Cal. 208, 211; the Court said:

"If a State Court has acquired jurisdiction under a state law of a case in insolvency, and is engaged in settling the debts and distributing the assets of the insolvent before or at the date at which the Act of Congress upon the same subject takes effect, the State Court may, nevertheless, proceed with the case to its final conclusion, and its action in the matter will be as valid as if no law upon the subject had been passed by Congress. This question arose in the case of Judd v. Ives, 4 Metcalf, 401, and was determined as just stated."

In *Minot v. Thacher,* 7 Metcalf (Mass.) 348, 41 Amer. Dec. 444, the Court said:

"The proceedings under the insolvent law having been instituted before the bankrupt act was enacted, they could not be superseded by the application, under the bankrupt law. * * *"

In *Greensfeld Bros. v. Brownell* (N. M. 1904), 76 Pac. 310, 312, referring to Bankruptcy Act of 1898:

"* * * It was only intended to act in the future, and to take cognizance of such acts of bankruptcy as were committed after its passage. As to acts

> committed before its passage, there could be no collision between the bankrupt laws and the laws of this territory which we are now considering, because the bankrupt law was not, and could not under its express terms be, operative as to acts committed before its passage. We can see no reason for not permitting proceedings brought under the territorial statutes to proceed, * * * Unless this construction is held, it is obvious that the bankruptcy law might act as a shield * * *'' etc.

See, also:

Day v. Bardwell, 97 Mass. 246, 255.

In *In re Bruss-Ritter Co.,* 90 Fed. 651, the Court had before it an involuntary bankruptcy proceeding under the Act of 1898. The act provided for a certain day on which it would take effect, and also provided that involuntary proceedings could not be commenced within four months after that date. During that four months' period an insolvency proceeding was commenced in the State Court. A motion was made to dismiss the bankruptcy proceeding on the ground that an action was pending in the State Court when the Bankruptcy Act took effect. The Court seems clearly to recognize the rule, but held that while an involuntary proceeding could not be filed within that four months' period, still the act actually took effect at the earlier date and prior to the commencement of the action in the State Court. The Court necessarily denied the motion, but it was clearly indicated that had the state proceeding been pending prior to the effective date of the Bankruptcy Act or prior to its passage, then the motion would have been good.

In the nature of things this question would not often arise, but as above indicated, so far as we have been able to find, every time the question has arisen it has been decided as above indicated, namely, that when the proceeding under an insolvency act of the state is pending at the time of the passage of the Bankruptcy Act that proceeding is unaffected and the Court in which it is pending has jurisdiction to carry that proceeding on to conclusion. If that be the case then the Federal Court did not have jurisdiction of the same matter at the same time.

That action is still pending in the State Courts. The appellants are unwilling to have that action dismissed and has appealed from an order entered by the State Court dismissing the action without the appellants' consent. Since the trial Court does not seem to have had jurisdiction while that jurisdiction is in the State Court, we suggest that this proceeding ought to be now ordered dismissed.

We now pass to the question of *res judicata.*

THIRD PROPOSITION: THE CAUSE IS RES JUDICATA.

Assignment of Error No. 3 is as follows:

> "The court erred in finding that none of the matters alleged in the present petition are res judicata, and in finding that this court had power and jurisdiction to consider and adjudicate all of the matters in this proceeding."

We have two federal bankruptcy statutes for relief of Irrigation Districts, Chapter IX and Chapter X, now renumbered Chapter IX.

This district came into Court under old Chapter IX and presented a plan. (Tr. pp. 149, 295.) The case went to trial and a judgment, which is now final, was renedered, dismissing the cause. This proceeding is under Chapter X, and has presented the same plan with the same parties and demanding the same relief. The only difference in the two plans is that under the present plan the district reserves the right to pay in cash or in bonds. This difference in the plan is inconsequential, particularly because if there is any difference it is a further derogation of appellants' rights. If the plan granted appellants greater rights, it could possibly be said that the difference was of consequence.

Chapter X (now Chapter IX) does not repeal old Chapter IX, stating in Section 83h that "This Chapter shall not be construed so as to modify or repeal any prior existing statute relating to the refinancing or readjustment of indebtedness of municipalities, political subdivisions, or districts", stating further that the "initiation" of proceedings or filing a petition under Section 80 shall not constitute a bar to a new proceeding under Section 81.

This does not say that a judgment under Section 80 is not to be construed as res judicata.

We have two decisions by the Supreme Court, the *Ashton* decision, declared old Chapter IX unconstitutional. The decision in *U. S. v. Bekins,* 304 U. S. 27, declared Chapter X constitutional.

The rule of decision is that the Court declares an act void or valid, as applied to a particular case. Old

Chapter IX is still in existence if it can be applied constitutionally; Congress has specifically preserved its existence.

The differences between Chapter IX and Chapter X are not of substance. (See Cal. Law Reviews July, 1938, p. 624.)

The *Bekins* decision did not specifically overrule the *Ashton* decision. It is apparent, however, that the *Ashton* decision may be regarded as flatly overruled.

That brings to attention the first point. *If the Ashton decision is overruled and old Chapter IX is constitutional then we have a final judgment in the Palo Verde case.*

The second point, equally good, is that *however it may be regarded as to whether the Ashton case was reversed we have a final judgment in the Palo Verde case.* The very things, and each and every thing that the Palo Verde District now seeks to do in its present cause, has been declared in the prior cause to be an unconstitutional infringement of the rights of the respondents. Considering these two points, we will first respectfully direct the Court's attention to the proposition that the *Ashton* case stands overruled.

THE ASHTON CASE IS OVERRULED BY THE BEKINS CASE.

It cannot be seriously argued that there is a material difference between Chapter IX and Chapter X of the Bankruptcy Act, so far as their applicability to any particular agency is concerned.

The similarity of the two statutes is particularly noticeable in this case when we consider that the

same identical plan, with an immaterial change above noted, is used under one chapter as was attempted to be used under the other.

In the *Bekins* (304 U. S. 27-54) case, supra, the Court quotes from the House Committee Report and says (50):

> "Compositions are approvable only when the districts or agencies file voluntary proceedings in Courts of Bankruptcy, accompanied by plans approved by 51 percent of all the creditors of the district or agency, and by evidence of good faith." (This was all required under Chapter IX.) "Each proceeding is subject to ample notice to creditors" (so were they under Chapter IX), "thorough hearings" (also under Chapter IX), "complete investigations" (also under Chapter IX), "and appeals from interlocutory and final decrees". (Also under Chapter IX.) "The plan of composition cannot be confirmed unless accepted in writing by creditors holding at least 66⅔ percent of the aggregate amount of the indebtedness of the petitioning district or taxing agency" (neither could it be under Chapter IX) "and unless the Judge is satisfied that the taxing district is authorized by law to carry out the plan" (also under Chapter IX), "and until a specific finding by the court that the plan of composition is fair, equitable, and for the best interest of the creditor" (the same is true under Chapter IX) * * *
>
> (51) "The bill here recommended for passage expressly avoids any restriction on the powers of the States or their arms of government in the exercise of their sovereign rights and duties." (It was the same under Chapter IX.) "No interference with the fiscal or governmental affairs of

a political subdivision is permitted." (Such interference with fiscal and governmental affairs is not only permitted but required if the plan is to become effective, but regardless of that, Chapter X is in no manner different in that respect than was Chapter IX.) "The taxing agency itself is the only instrumentality which can seek the benefits of the proposed legislation." (So it was under Chapter IX.) "No involuntary proceedings are allowable" (neither were they under Chapter IX), "and no control or jurisdiction over that property and those revenues of the petitioning agency necessary for essential governmental purposes is conferred by the bill." (Neither was it under Chapter IX.) * * *

* * * "It is the opinion of the Committee that the present bill removes the objections to the unconstitutional statute. * * *"

The Court said: "We are of the opinion that the Committee's points are well taken and that Chapter X is a valid enactment. The statute is carefully drawn so as not to impinge upon the sovereignty of the State. The State retains control of its fiscal affairs."

The Court points out no part of Chapter X which distinguished it from Chapter IX in so far as interference with State affairs is concerned. Therefore it seems clear that the Court is not basing its decision upon the differences of the two statutes but upon the principles applicable to one of them as well as to the other.

The field of inquiry is clearly stated by the Court in the *Bekins* case as follows:

"We are thus brought to the inquiry whether the exercise of the federal bankruptcy power in dealing with a composition of the debts of an irrigation district, upon its voluntary application and with the State's consent, must be deemed to be an unconstitutional interference with the essential independence of the State as preserved by the Constitution."

The Court then answers that inquiry in one sentence above quoted: "The statute is carefully drawn so as not to impinge upon the sovereignty of the State."

Now let us turn back to the *Ashton* case and see what was there held and then further examine the holdings in the *Bekins* case.

In the *Ashton* case, supra, (298 U. S. 513-543), the Court said:

"* * * the Texas Legislature declared that municipalities, political subdivisions, taxing districts, etc., might proceed under the Act of Congress approved May 24, 1934." (527)

"If federal bankruptcy laws can be extended to respondent why not to the state?" (530)

"If voluntary proceedings may be permitted, so may involuntary ones, subject, of course, to any inhibition of the Eleventh Amendment."

"If the State were proceeding under a statute like the present one, with terms broad enough to include her, apparently the problem would not be materially different."

"If obligations of States or their political subdivisions may be subjected to the interference here

attempted, they are no longer free to manage their own affairs. * * *'' (531)

''And really the sovereignty of the State, so often declared necessary to the federal system, does not exist.''

''The Constitution was careful to provide that 'No State shall pass any law impairing the obligation of contracts'. This she may not do under the form of a bankruptcy act or otherwise.''

''Nor do we think she can accomplish the same end by granting any permission necessary to enable Congress so to do.''

''Neither consent nor submission by the States can enlarge the powers of Congress; none can exist except those which are granted.''

''The sovereignty of the State essential to its proper functioning under the Federal Constitution cannot be surrendered; it cannot be taken away by any form of legislation.''

''Like any sovereignty, a State may voluntarily consent to be sued; may permit actions against her political subdivisions to enforce their obligations. Such proceedings against these subdivisions have often been entertained in federal courts. But nothing in this tends to support the view that the Federal Government, acting under the bankruptcy clause, may impose its will and impair State powers—pass laws inconsistent with the idea of sovereignty.''

Now when we turn to the *Bekins* case after presenting certain authority and argument the Court states (53):

"In the instant case we have cooperation to provide a remedy for a serious condition in which the States alone were unable to afford relief. Improvement districts, such as the petitioner, were in distress. Economic disaster had made it impossible for them to meet their obligations. As the owners of property within the boundaries of the district could not pay adequate assessments, (54) the power of taxation was useless. The creditors of the District were helpless. The natural and reasonable remedy through composition of the debts of the district was not available under state law by reason of the restriction imposed by the Federal Constitution upon the impairment of contracts by state legislation. The bankruptcy power is competent to give relief to debtors in such a plight, and if there is any obstacle to its exercise in the case of the district organized under state law it lies in the right of the State to oppose Federal interference. The state steps in to remove that obstacle. The state acts in aid, and not in derogation, of its sovereign powers. It invites the intervention of the bankruptcy power to save its agencies which the State itself is powerless to rescue. Through its cooperation with the national government the needed relief is given. We see no ground for the conclusion that the Federal Constitution, in the interest of state sovereignty, has reduced both sovereigns to helplessness in such a case. * * *

(49) In Ashton v. Cameron County * * * the court considered that the provisions of Chapter IX (50) authorizing the bankruptcy court to entertain proceedings for the 'readjustment of the debts' of 'political subdivisions' of a state 'might

> materially restrict its control over its fiscal affairs,' and was therefore invalid; that if obligations of States or their political subdivisions might be subjected to the interference contemplated by Chapter IX, they would no longer be 'free to manage their own affairs'."
>
> "In enacting Chapter X the Congress was especially solicitous to afford no grounds for this objection."

The Court neither points out the difference between the two statutes that saves Chapter X as against the unconstitutionality of Chapter IX nor does it state in so many words that Congress did succeed by its solicitation in affording no grounds for the objections found in the *Ashton* case.

The whole decision in the *Bekins* case like that in the *Ashton* case is placed upon principle and the principles upon which the Court held Chapter IX unconstitutional are completely reversed and overruled in the *Bekins* case.

There seems to be but one possible difference between the two statutes upon which the Court might hold one valid and the other void. That difference, hereinabove discussed under our second proposition, is in the word "petitioner" found in Section 83c and the words "taxing district" found in subdivision (c) 11 of the old Section 80. "Taxing District" was defined by the void act to be a political subdivision, whereas the "petitioner" under the new act might be such an agency as would not be a political subdivision or governmental agent at all. That difference, how-

ever, does not in any way effect the principles discussed by the Court. The Court does not refer to this difference at all but decides the *Bekins* case wholly upon principle and exactly opposite to the same principles as apply to Chapter IX. It therefore appears that the *Ashton* case has been overruled, and the effect would seem to be to leave old Chapter IX upon the books as a valid enactment.

That the *Ashton* case is overruled was concluded by the United States Circuit Court of Appeals for the Fifth Circuit in the case of *Supreme Forest Woodmen Circle et al. v. City of Belton, Texas,* 100 F. (2d) 655 at 657, where the Court said, referring to the *Bekins* decision:

> "It is the view of the writer that this opinion does not attempt to distinguish, but completely reverses that in the Ashton Case."

Indeed, counsel for the appellee conceded at the argument on his motion to dismiss this appeal in this Court that the *Ashton* case was overruled.

If the *Ashton* case is overruled then the old Chapter IX was valid and a decision under it, while it might be erroneous, is nevertheless final and binding.

> "If the decision that a statute is unconstitutional is subsequently reversed or overruled, the statute will be treated as valid and effective from the date of its enactment."
>
> 12 *C. J.* 801.

We now turn to the second point under this heading, namely, that even if the *Ashton* case be not re-

garded as overruled, still, we find here a proceeding demanding the same relief from the same parties in the same way as was sought but denied in a former proceeding, in which the judgment, though possibly erroneous, is long since final.

This is a different situation than was presented in the *Frasier-Lemke* cases where under a new petition the debtor seeks to do different things than he sought to do under the old petition.

Here we have the debtor seeking to do the same things under this statute which it was adjudged under the old statute it could not do.

THE DOCTRINE OF RES JUDICATA OR ESTOPPEL BY FORMER JUDGMENT.

Mr. Justice Harlan, in *Southern Pacific Railroad Company v. United States,* 168 U. S. 1, 48, 18 S. Ct. 18, said:

> "The general principle announced in numerous cases is that a right, question, or fact distinctly put in issue and directly determined by a court of competent jurisdiction as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established so long as the judgment in the first suit remains unmodified. This general rule is demanded by the very objects for which civil courts have been established, which is to secure the peace and repose of society by the settlement of matters capable of judicial

determination. Its enforcement is essential to the maintenance of social order; for the aid of judicial tribunals would not be invoked for the vindication of rights of person and property, if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect of all matters properly put in issue and actually determined by them."

See also

34 *C. J.* 744, and notes there set forth.

The judgment here is a final judgment between these parties declaring that that which was sought to be done could not be done.

So, while judgments rendered under unconstitutional laws are voidable, the right to have such a judgment set aside may be waived by voluntary action on the part of the defendant. (12 C. J. 801.) This really means that a final judgment cannot be questioned as between the parties.

"A fact or question which was actually and directly in issue in a former suit, and was there judicially passed upon and determined by a domestic court of competent jurisdiction, is conclusively settled by the judgment therein, so far as concerns the parties to that action * * * and cannot be again litigated in any future action between such parties or privies, in the same court or in any other court of concurrent jurisdiction, upon either the same or a different cause of action."

34 *C. J.* 868.

This is the rule, even though the second suit has a different object and is not technically for the same cause as the first action, but is so related to it that some matters essential to recovery in the second action were determined in the first. (34 *C. J.* 817.)

"A party cannot escape the bar of a judgment against him by bringing a new suit on the same cause of action, but in a different form of action or proceeding."

34 *C. J.* 813.

"It has been held that a proper test on an issue of identity of causes of action is to inquire whether the judgment sought will be inconsistent with the prior judgment; if such inconsistency is not shown, the prior judgment is not a bar."

34 *C. J.* 805.

THE NEW STATUTE HAS NO EFFECT ON THE OLD JUDGMENT.

The general rule is that

"The legislature may not, under the guise of an act affecting remedies, annul, set aside, or impair final judgments obtained before the passage of the act."

12 *C. J.* 984;

McCullough v. Virginia, 172 U. S. 102, 18 S. Ct. 134.

"The policy of the law or constitutional principle involved very clearly is that rights of property, once vested * * * by judicial decision then finally between the parties shall not afterwards be disturbed or the controversy opened by mere legislative enactment."

Lancaster v. Barr, 25 Wis. 560, 562.

The vested right as a ground of defense is protected from being destroyed by an act of the legislature. (12 *C. J.* 973.)

Of course, in California a judgment is a contract. *Scarborough v. Dugan,* 10 Cal. 305, and under the new rule of interpretation adopted by the United States Supreme Court in *Erie Railroad Company v. Tompkins,* 58 S. Ct. 817, the doctrine of *Swift v. Tyson* is disapproved and in any case, except matters governed by the Federal Constitution or acts of Congress, the substantive law will be applied as found in the law of the State whether declared by statute or by decision of its highest Court. This applies not only to law cases, but to equity cases as well.

An amendment of an unconstitutional statute, making it constitutional does not have a retroactive effect so as to affect the validity of a judgment determining such statute unconstitutional rendered before the amendment, and such a judgment will not be reversed upon appeal by reason of such amendment. *(Frost v. City of Los Angeles,* 181 Cal. 22, 183 Pac. 342.

In this case the Court said:

> "* * * the answer is that amendments to the law do not operate upon an existing suit in a case like the present, nor have retroactive effect so as to affect the validity of a judgment rendered before the new law came into existence."

It is said in some of the cases that for a judgment to be successfully pleaded as an estoppel or *res judicata* that judgment must have been rendered "on the

merits". That term must not be confused with "facts". A judgment may be based wholly on the law as applied to facts pleaded and without any evidence whatever and yet be a judgment "on the merits".

In note 67(a), 34 *C. J.* 776, it is stated:

> "Other Statements of Rule.—The term 'upon the merits,' as used in the rule that no judgment can be pleaded as an estoppel or res judicata unless it is pronounced by decision of the court upon the merits and is the conclusion of the court upon the facts after final hearing, means on a matter of substance, as distinguished from matter of form, the real or substantial grounds of action or defense, in contradiction to technical or collateral matter raised in the course of the suit, and 'after final hearing' means after the cause is finally submitted to the court for decision. Neil v. Hyde, 32 Ida. 576, 186 P. 710. (2) 'As a technical legal form, "merits" has been defined in law dictionaries as "matter of substance in law, as distinguished from matter of form" (Black; Burrill), and as "the real or substantial grounds of action or defense, in contradistinction to some technical or collateral matter raised in the course of the suit." (Anderson; Abbott.) "A judgment is 'upon the merits' when it amounts to a declaration of the law as to the respective rights and duties of the parties, based upon the ultimate fact or state of facts disclosed by the pleadings and evidence, and upon which the right of recovery depends, irrespective of formal, technical, or dilatory objections or contentions." 2 Black Judg., s. 694.' Ordway v. Boston etc. R.

Co., 69 N. H. 429, 430, 45 A. 243 (quote Wolfe v. Georgia R. etc. Co., 6 Ga. A. 410, 412, 65 S. E. 62)."

Bouvier refers to a New York case and says:

"In the New York Code of Procedure, it has been held to mean 'the strict legal rights of the parties as contra-distinguished from those mere questions of practice which every court regulates for itself, and from all matters which depend upon the *discretion* or *favor* of the court.' St. Johns v. West, 4 How. Pr. (N. Y.) 332."

FOURTH PROPOSITION: RECONSTRUCTION FINANCE CORPORATION IS NOT A CREDITOR AFFECTED BY THE PLAN.

Assignments of Error Nos. 6 and 7, are as follows:

"6. The court erred in finding that Reconstruction Finance Corporation owned and held 96% or any other amount of the indebtedness affected by the plan of composition, and in finding that it owns more than 95% or any other amount of each of the issues of bonds mentioned in said petition.

7. The court erred in finding that it is not true that 96% or any of the obligations of petitioner have been paid with funds obtained from Reconstruction Finance Corporation and in finding that it is not true that petitioner is obligated in an amount equal to 24.81% or any percentage of 96% of the obligations of petitioner or any sum less than the whole sum of principal and interest evidenced by the face of said obligations together with interest thereon at the rate of 4 per cent per annum. The court erred in finding that by the contract executed between petitioner and Recon-

struction Finance Corporation, petitioner is obligated to said corporation to the full amount of principal and interest evidenced by the note and bonds held by said corporation, and in finding that said corporation has neither loaned nor advanced any funds to petitioner, and in finding that no amount of obligations held by Reconstruction Finance Corporation has in fact or in legal effect or otherwise been extinguished." (Tr. pp. 341, 342.)

By Section 83 of the Bankruptcy Act the petition shall allege that not less than 51 percentum in amount of the securities *affected by the plan* (excluding however any such securities owned, held or controlled by the petitioner) have accepted it in writing. By the same section it is provided that not less than ten days prior to the time fixed for the hearing any creditor of the petitioner *affected by the plan* may file an answer.

By the same section (subdivision b) it is provided the plan of composition shall not be confirmed until it has been accepted in writing by or on behalf of creditors holding at least two-thirds of the aggregate amount of claims of all classes *affected by the plan.*

In subdivision a of the same section it is provided that "No creditor shall be deemed to be affected by any plan of composition unless the same shall affect his interest materially, * * *"

In Section 82 it is provided that the term "security affected by the plan" means security as to which the rights of the holders are proposed to be adjusted or modified materially by the consummation of the composition agreement.

The term "affected by the plan" of course means adversely affected by the plan.

For convenience in this discussion and with permission of the Court we will refer to the appellee Palo Verde Irrigation District as the district and to Reconstruction Finance Corporation as R. F. C.

Prior to March 1, 1934 the district made application to R. F. C. for a loan, pursuant to the provisions of Section 11 of an Act of the Legislature of California approved May 5, 1917 as amended (Stats. 1933, p. 2394) so far as the district is concerned and pursuant to the terms of the Emergency Farm Mortgage Act of 1933 (Title 43, Section 403, U. S. C. A.) (Appendix p. 80) so far as R. F. C. is concerned. The terms of these two acts are important as we will see in construing the resolutions and agreements between the district and R. F. C.

The loan was approved by R. F. C. by resolution on March 1, 1934. (Tr. pp. 201-223.) The plan set up in that resolution is the same plan brought forward as a plan of composition under an Act of Congress that was not passed until more than three years later and now involved in these proceedings. The plan has never been changed or modified.

The plan called for refunding bonds of the district to represent the amount of the loan and the district election authorizing the loan was held on June 15, 1934. (Tr. p. 223.)

An agreement was entered into between the district and R. F. C. as of August 7, 1934 (Tr. p. 225), and as of the same date a second agreement somewhat dif-

ferent in its terms was entered into between the same parties. (Tr. p. 236.) It was stipulated however that the first agreement dated August 7, and being Petitioner's Exhibit No. 19, was approved or authorized by the district on July 24, preceding. (Tr. p. 225.) Disbursement by R. F. C. was made on the loan on October 31, 1934 (Tr. p. 224), and that at the time of trial R. F. C. had in its possession 96.76% of the old bonds. (Tr. p. 224.)

R. F. C. now claims to be the owner of these old bonds and is therefore a creditor affected by the plan and competent to give its consent to the composition proposed.

The Court will not act blindly upon this important proposition but will look into the whole transaction to see whether or not R. F. C. is first, the owner of the bonds, and secondly, whether or not it is affected by the plan.

It is interesting to note that at the time R. F. C. approved the loan and adopted its resolution on March 1, 1934, there was no bankruptcy law upon this subject. Furthermore there was no bankruptcy law upon the subject when Congress approved that part of the Emergency Farm Mortgage Act of 1933 authorizing R. F. C. to make loans for the purpose of enabling a district to reduce and refinance its outstanding indebtedness where an agreement had been entered into between the applicant and the holders of its outstanding bonds under which the applicant would be able to purchase or refund all or a major proportion of such bonds or other obligations, nor was there any bank-

ruptcy law when the Districts Securities Commission made its order No. 8 approving the proposition for election, that of the issuance of the refunding bonds (Tr. p. 278) and the so-called "Refunding Plan".

After Chapter IX of the Bankruptcy Act had been passed the district and R. F. C. entered into two contracts under date of August 7, 1934. Chapter IX was declared unconstitutional in the *Ashton* case. (*Ashton v. Cameron County Water Improvement District No. 1,* 298 U. S. 513.) At that time the district had pending in the District Court of the United States a petition in bankruptcy, *presenting this same plan,* under Chapter IX which was dismissed, as we have seen, on December 8, 1936. (Tr. p. 149.) Also as we have seen the district then went into the State Courts in April, 1937, under the State Act and presented this same plan supported by this same resolution and these same agreements. Thereafter on August 16, 1937, the act under which these proceedings are pending was approved. In May, 1938, these proceedings were commenced supported by this same plan under this same resolution and these same agreements.

All these facts and circumstances will be taken into account by the Court in considering the instruments constituting the agreement between the parties and likewise the Court will consider the powers of the parties in entering into the agreements, namely, the state law as to the powers of the district and the Emergency Farm Mortgage Act as to the powers of the R. F. C.

We will now briefly examine this resolution and the agreements.

The resolution is found in the transcript commencing at page 201. And in the first paragraph of the preamble, it is recited that the petitioner has applied "for a loan to enable it to reduce and refinance its outstanding indebtedness". Whether this recital were in the resolution or not it would necessarily be read into the resolution because R. F. C. is authorized to make loans in such cases only for the purpose of enabling the applicant to reduce and refinance its outstanding indebtedness. If it still owes the full amount of these old bonds held by R. F. C. it certainly has failed in its purpose.

At page 204 of the transcript it is stated that no loan shall be made hereunder (a) unless all of the old securities shall be thus deposited, or, (b) unless the division chief shall deem that such a large proportion of such securities has been deposited as will satisfactorily accomplish the purposes of the corporation in authorizing the loan. It is then provided that the amount loaned by the corporation shall be sufficient to provide for payment of the amounts of money on account of the deposited securities as follows: 24.81¢ for each dollar of principal amount of such bonds in case the district is unable to secure the deposit of all of such bonds, but shall procure the deposit of such large proportion thereof as shall be required or approved by the division. Since more than 90% of the bonds have been deposited and the corporation actually disbursed on October 31, 1934, it seems to conclusively follow that the division chief was satisfied that a sufficiently large proportion had been deposited to accom-

plish the purposes of the corporation in authorizing the loan.

Subsection b of Section 5 of the Resolution (Tr. p. 208) provides that in the event the division chief shall deem it necessary to keep any or all of the deposited securities alive for a greater or lesser length of time *in order to maintain a parity of rights* as between the holders of the deposited securities and the rights of holders of old securities, or for any other purpose, then the loan may be made directly to the owners' agent and consenting owners. Then, in that event, it is expressly provided that such loan shall be represented by notes of such consenting owners' agents, and the deposited securities shall be pledged as security therefor. There seems to be no evidence that that was ever done. Following on page 209 of the transcript it is provided that the note shall bear 4% interest and the district shall not be a party but if the district pays the interest the corporation will accept the interest payment and give credit to the district for payment of interest for such period on all deposited securities at that time held by the corporation, and that nothing contained in the resolution shall be deemed to limit the right of the corporation to force full payment of interest or principal as on deposited securities it may hold at any time when it may deem it advisable to do so in order to protect its rights as holders of deposited securities against any rights claimed by the holders of old securities that have not been deposited.

Whether this last provision is a valid and binding requirement or not becomes immaterial as it appears

that that procedure was never followed out by the giving of notes and the pledging of securities. It was handled in a different way as we will note.

This resolution which is all important upon this phase of the discussion will be examined in detail by the Court and we will not burden the Court by any minute analysis of the same. It is sufficient to state that it is quite apparent from the resolution that at the time it was entered into or approved there was no thought in the minds of either the corporation or the district that the ownership of these old securities would at any time or in any way or in any manner pass to R. F. C. for the full amount of the old obligations or for any other amount. If the matter was to be handled by a note given by owners' agent then and in that case the old bonds would be deposited with the note as a pledge but that apparently was never done. Now it is claimed that even though that was not done, and even though R. F. C. disbursed to the amount of some 96% of the old security, what it actually did was to purchase the old securities and own them outright. This resolution appears to give no hint that such a transaction was contemplated or might be followed. If R. F. C. had attempted to follow that procedure it is apparent that their acts would have been ultra vires. This, notwithstanding the fact that in the second agreement of August 7, 1934, which is Petitioner's Exhibit No. 20, it is recited that by said resolution it was contemplated (Tr. p. 236) that this indebtedness would be reduced or refinanced by the corporation acquiring the old securities.

The first contract between the district and R. F. C. being Petitioner's Exhibit No. 19 (Tr. p. 225) seems to be entirely in accordance with the resolution of March 1, 1934. We find not a word in that contract to the effect that R. F. C. may go out into the market and buy up and own the old securities. It is all based upon the theory of a loan to the district and a reduction of the district's indebtedness and the execution and delivery by the district of refunding bonds to R. F. C. for the amount of the loan.

We find quite a different situation in the second agreement betwen the district and R. F. C. under date of August 7, 1934, and being Petitioner's Exhibit No. 20. (Tr. p. 236.) The first agreement is based upon the resolution of March 1st and the subsequent election held in the district on June 4th. If the second agreement is not in accordance with the resolution and the agreement which followed the resolutions, which were approved by the people at an election for that purpose, its validity for any purpose could well be doubted.

In this second resolution we find the proposition advanced for the first time that it was contemplated by the resolution of March 1st that the corporation would make the loan by acquiring the old securities (Tr. p. 236) and thereafter exchanging said old securities for new bonds to be issued by the district. Notwithstanding the fact that this second agreement purports to authorize R. F. C. to acquire and be the owner of the old securities it is expressly provided (Tr. p. 239) that during the time the corporation holds any of the old

securities which have not been refinanced by the delivery of new bonds, the district will levy and collect taxes and assessments in sufficient amount to pay the corporation each a year sum which would yield to the corporation 4% upon the total amount of the disbursement made by it in acquiring such old securities. It is provided that the corporation may require the district to pay any larger sum not exceeding the amount due on the old securities according to their terms but it is very apparent that such contingency is not at all contemplated.

When we consider that this second resolution does not square with the first one or with the resolution upon which the people voted and when we consider that the district itself paid very large sums of public money for the purpose of bringing about this refinancing which of course it simply could not do if it was simply transferring ownership of its outstanding securities from one holder to another, and when we consider that the indebtedness of the district to R. F. C. is not the amount of the old securities but the amount of the loan disbursed it becomes perfectly obvious that this second resolution sheds little light upon the true relation of R. F. C. to the district.

It clearly appears that R. F. C. is holding these bonds in some capacity other than as the absolute owner thereof. If it is holding these bonds as owner it violates its own charter. If the district has paid out sums of money to transfer the ownership from one security holder to another it has committed an *ultra vires* act. The Court is not going to presume that any of these

unlawful things were done. The Court is going to presume that the district and R. F. C. acted lawfully, which they did. The District lawfully expended its money in order to reduce its debt; not surely to effect a mere transfer from one creditor to another, nor to enable such new creditor to "buy its way into Court". R. F. C. authorized the loan for the purpose of reducing the debt, not to keep it the same. The resolution provides that in the event the R. F. C. loans its money to owners' agent and takes agent's notes and the bonds are pledged it may keep the bonds alive for the purpose of bringing about parity[1] between those bonds and the undeposited old securities. Maybe it can do that and maybe it cannot, but it did not because it did not loan to the owners' agents and take their note, so it is apparent that no parity exists.

It may be argued, as it has been many times in these and other similar proceedings, that these are only steps leading to a completed loan, and that R. F. C. in the meantime is the absolute owner of the bonds, but this cannot be in this case for at least two reasons. In the first place, such a procedure is not authorized anywhere in the real contract between the parties, and secondly suppose the loan never is made, then the whole transaction is void as *ultra vires* upon the district under the Act of 1917 as amended and by the R. F. C. under the Emergency Farm Mortgage Act of 1933 as amended. The original bondholders up to some 96% have received their money, have been paid off

1. Parity may and probably does refer to parity of rights between the non-deposited bonds and the R. F. C. *"loan"*. There may have been a question whether the new refunding bonds were of parity with the original bonds held by the non-consenting bondholders.

and gone their way. In order to make this a valid transaction which it is, then these bonds are held by R. F. C. in some capacity other than as absolute owner, which at once differentiates R. F. C. from the appellants in this case. The most that can be said of these bonds in possession of R. F. C. is that they are either, in contemplation of law, already cancelled or paid or they are held by R. F. C. in pledge to secure the advances that have already been made prior to the time R. F. C. received the refunding bonds. This latter supposition is probably the correct one, but in no event is R. F. C. the absolute owner. Therefore it is not affected by the plan and cannot vote its consent.

THE CONDUCT OF THE PARTIES SHOWS THE TRANSACTION TO BE A COMPLETED LOAN.

Where the rights of third parties, viz.: these appellants, have attached the conduct of the parties is a relevant part of the transaction.

Particularly applicable here is the rule stated in 1 *Mechem,* Sales (1901), sec. 46, p. 45:

> "In doubtful cases, moreover, these ambiguous contracts are construed most strongly against their framers, if such a construction is necessary to protect the rights of others."

In *Arbuckle Bros. v. Kirkpatrick,* 98 Tenn. 221, 39 S. W. 3 (1897), the Court said (p. 252):

> "In construing such a contract, whenever it affects the rights of others, it will be so construed as to protect such rights, and not to enable the complainants to carry out any double purpose. In view of its uncertainty and contradictory provi-

sions the Court will see that third parties are not prejudiced by its construction."

Always of great weight in the interpretation of the contract is what the parties have done under it. (*Insurance Co. v. Dutcher,* 95 U. S. 269, 273; *Topliff v. Topliff,* 122 U. S. 121, 131; *District of Columbia v. Gallaher,* 124 U. S. 505, 510.

Furthermore, in the execution of the loan transaction itself and the preliminaries thereto, the intent of the parties shows that the loan was to be fully consummated and completed upon the disbursal.

Title 15, Section 15, Title 604(a), U. S. C., provides:

> "No funds shall be disbursed on any commitment or agreement to make a loan or advance hereafter made by the Reconstruction Finance Corporation after the expiration of one year from the date of such commitment or agreement; * * *"

It is obvious therefore that the loan disbursed on October 31, 1934 expired at least within a year from that time. The R. F. C. must have intended therefore that the transaction was complete at that time.

Title 43, Section 403, U. S. C. A., provides that

> "No loan shall be made * * * until an agreement has been entered into between the applicant and the holders of its outstanding bonds or other obligations under which the applicant will be able to purchase or refund all or a major portion of such bonds * * * and under which a substantial reduction will be brought about in the

amount of the outstanding indebtedness of the applicant."

The conduct of the R. F. C. in making disbursal in October, 1934 shows that the R. F. C. was satisfied that that provision had been complied with.

All of the witnesses including Mr. Wagner referred to the transaction as a loan by the R. F. C. In fact wherever reference is made to the transaction in any of the papers in the case, except in the instructions of the R. F. C. to its agent, we find the reference is to a loan.

Exhibit 19, which is the bona fide agreement with the R. F. C., states that whereas the district has submitted to the electors by an election the proposition "of entering into and carrying out a contract with the R. F. C. for a loan" and recites that the plan has been submitted to the Districts Securities Commission and finally that it is mutually agreed

"That the Reconstruction Finance Corporation agrees to loan an amount not to exceed $1,039,423 to and for the benefit of said district."

Thus showing that this agreement is made in accordance with the R. F. C. resolution and the election of the people.

Order No. 8 of the Districts Securities Commission approving the refunding plan and issuance of the refunding bonds dated May 4, 1934 (Tr. p. 278) recited:

"(3) That said refunding bonds be issued to repay the Reconstruction Finance Corporation

> for equal amounts of loans provided by said corporation, for the payment of the said district's present outstanding indebtedness in accordance with Section 11 of the Act * * *"

This clearly shows that the Districts Securities Commission in giving its approval intended that the refunding bonds should be issued to repay dollar for dollar, the amounts of loans provided by the R. F. C. for the payment of the district's present debt.

A resolution of the Board of Directors (Tr. p. 279) recited that in October, 1934 the R. F. C. has authorized a loan to enable the district to reduce its outstanding debt and that an advance from the R. F. C. to the district is about to be made under said loan agreement. This is recited as a preliminary in a resolution for the cancellation of a certain lease, but the important part of the resolution is that it states that the advance is about to be made *to the Palo Verde district.* There also appeared a resolution of the Board of Trustees (Tr. p. 279) reciting as one of the "changed conditions" the fact that the district has been granted a certain loan by the R. F. C. which it was expected would be consummated in the near future.

Petitioner's Exhibit 33, which is a copy of the second rehabilitation plan (Tr. p. 272) under the heading "Standby Charges" states that a charge will be collected to cover "Interest and principal on R. F. C. loan".

The same reference is found in the Third Rehabilitation Plan, Petitioner's Exhibit 34 and Exhibit 32.

A letter from the District to the bondholders, dated April 16, 1934 (Tr. p. 242) contains this statement:

> "As a result of negotiations with representatives of all groups of bondholders, the district is now in a position to make the following cash offer for your bonds,"

and the letter went on to state that it was uncertain just when the R. F. C. would "furnish the first part of the money to be loaned" and that it was desirable to deposit the bonds as soon as possible. This letter was signed by the president and all of the members of the board. In compliance with these instructions the bondholders send in their escrow agreements and instructions (see Petitioner's Exhibit 10) to Security First National Bank, which instructions stated (Tr. p. 174):

> "I hand you herewith.....bonds....., which you are authorized to deliver to or upon the order of the Board of Trustees of said Palo Verde Irrigation District."

These words "to or upon the order of the Board of Trustees of the Palo Verde Irrigation District" are extremely important. Substantially every bond that was deposited in escrow was deposited under these instructions. It is well known that such an expression passes title to and through the grantee. Under these instructions the bank was authorized to

deliver the bonds to the district or to such person as they might order. Title therefore passed through them, and once having passed through them could never be acquired by the R. F. C.

Another important link in the chain is the resolution authorizing instructions to the Security First National Bank (Respondent's Exhibit A, Tr. p. 178),

> "For the purpose of consummating the loan for which Palo Verde Irrigation District heretofore applied, * * * deliver * * * for the account of the Reconstruction Finance Corporation * * * upon collection * * * *for the account of this district,* of a sum equal to $1000 plus 24.81¢ per dollar of the aggregate principal amount of said bonds",

and then specifically instructed

> "From the proceeds received from the Federal Reserve Bank pay $1000.00 * * * also pay to Palo Verde Properties, Inc. * * * $5.00 for each $1000.00 of principal * * * also pay to yourselves the sum of $500.00."

This resolution was adopted October 26, 1934, and it was headed "Resolution Authorizing Instructions * * * in the matter of closing Reconstruction Finance Corporation loan escrow".

THE MONEY ADVANCED WAS PAID TO THE DISTRICT.

Now if this was an outright purchase of bonds by the R. F. C. and if that was the intention of the bondholders when they deposited their bonds in escrow and of the R. F. C. in depositing the amount of the loan with the Federal Reserve Bank and of the

District, why was it necessary for the district thus to participate in the escrow. The answer is obvious. It was because the bondholders considered that they were surrendering their bonds to the district pursuant to the letter from the district that the district was now able to pay cash and to make a certain cash offer for the bonds, whereby the bonds would be paid off and cancelled, and they were therefore appropriately delivering the bonds to the district or its order. It is no different in this situation than where a check is made payable to John Doe or order. John Doe must convey title to the check by endorsing his name on the back thereof. The bank was not authorized to deliver the bonds to anyone, not even to the R. F. C., but only to the district or its order. Once having acquired the bonds or an interest in them there is no authority in California law for the retransfer of such liquidated bonds. That they acquired them is conclusive from the fact of receipt of the money from the R. F. C.

They become securities which are *owned, held, and controlled by the petitioner* as mentioned in Chapter IX of the Bankruptcy Act. They cannot be counted in the 51%, nor in the two-thirds necessary for confirmation of a plan. *They have been fully liquidated.*

Lastly, attention is called to the fact that the district paid some $1400.00 or $1500 in the transaction. (Tr. pp. 177, 180.) The payment of that sum by the district fits in very well with the theory of the ap-

pellants, that the R. F. C. made a loan to the district and that its only right is to receive refunding bonds; but on the other hand it does not fit in at all with the theory of the district that the R. F. C. purchased the bonds like any common bondholder, since there is no authority in the law warranting a payment by the district for the benefit of a mere purchaser of its bonded debt and the transfer of that debt from one bondholder to another.

WHAT IS A PLEDGE?

In *Shelley v. Byers,* 73 Cal. App. 44, 238 Pac. 177, the complaint alleged that plaintiff was the owner of and entitled to the possession of certain property, which was denied in the answer. Whether plaintiff was the owner was the prime question in the case. The Court found for the plaintiff and entered judgment, which was reversed on this appeal.

The Shelley boys, who had conducted an army department store, went through bankruptcy.

Thereafter they entered into a contract with Gollober and Rosenberg, upon the face of which there was what purported to be a sale to them by the Shelley boys of certain property, including all of the stock in trade of the store, with a right to repurchase reserved to the Shelley boys.

Appellant's theory of the transaction is that it was a pledge. Respondent contends that the transaction was a sale with an optional right reserved to the vendors to repurchase.

The Court said, page 54:

"Under our Statute a mortgagee of personal property in possession and a pledgee are practically, if not identically, the same. (Civ Code, Sec. 2924 and 2987.) *No legal title passes in either case,* but merely the right of possession for the purpose of security. (Civ. Code, Sec. 2888.)"

At page 62:

"That the parties intended the property to be held by (G. & R.) as security is unmistakably disclosed by certain strongly marked features shown on the face of the writing itself. In the first place, *the transaction had its inception in a negotiation for a loan,* or for what is the equivalent of a loan, to the Shelley boys, even if the latter did not become personally liable therefor. This is one of the principal *indicia* of a pledge." (Cases cited and quoted from.)

The case of *Union Securities Inc. v. Merchants Trust and Savings Company* (Ind.), 185 N. E. 150, 95 A. L. R. 1189, is quite analogous to the case of *Shelley v. Byers,* supra. The facts and the law thereof are amply covered in the headnote thereof as follows:

"A transaction whereby accounts receivable are assigned to another is, though denominated by the parties a sale of the accounts, in fact a loan, and the assignee of the accounts is not entitled to a preference out of the assets of the assignor in the possession of a receiver for the amount collected on such accounts by the assignor, where the arrangement was that the as-

> signee should advance 88 per cent of the face value of the accounts assigned, pay over an additional 10 per cent when the accounts should be paid, and keep 2 per cent as its profit, that the assignor should become a surety for the payment of such accounts, and collect them at its own expense, and the assignor, with the assignee's knowledge had mingled the proceeds of collection with other funds in its general bank account, paying 2 per cent a month for such amounts as were due and not remitted to the assignee, and the customers whose accounts were assigned were not notified of that fact."

The issue in that case is identical to the issue to be determined in the instant case, and is well stated, page 1193:

> "The decisive question in this case is whether the transaction between appellant and the Retherford Manufacturing Company was a bona fide sale of accounts as claimed by appellant, or was the transaction in fact a loan and the accounts assigned as security?"

The Court then proceeds to define a sale and a loan quoting from Cyc.

Although the contract on its face purported to use words of purchase and sale, the Court held it to be a loan.

The Court therein also discussed the facts and quoted from the case of *In re American Fibre Reed Co.,* 260 Fed. 309, 318. There, too, the corporation sold the accounts to the petitioner, which were collected by the vendors at their expense, the proceeds

to be applied first to the payment of the amount advanced by the vendee to the vendors, and the remainder of the amounts collected went to the vendors for their own benefit. The amount paid by the vendee was about 75 per cent of the face amount of the accounts, and accounts so sold were stamped on the books of the vendors as sold to the petitioner. The Court held:

> "Insofar as the contracts in question here used words fit for a contract of purchase, they are mere shams and devices to cover loans of money at usurious rates of interest."

The Court also cited and quoted from the similar case of *Chase & Baker Co. v. National Trust and Credit Co.,* 215 F. 633, 638. Passing on the question whether the agreement to buy accounts was in fact an agreement of sale or loan, the Court said:

> "A court of equity will not be frustrated in ascertaining the real intention of the parties to make a usurious loan by the fact that parol proof thereof would contradict the written evidence of the apparent transaction."

In another similar case, *In re Grand Union Co.,* 219 Fed. 353, 359, the Court said:

> "Stripped of the verbiage with which the parties have sought to clothe their transaction, the naked facts disclose that what they are doing was not a sale, but a loan, and that the leases were turned over simply by way of security. The Grand Union Company needed money and the Hamilton Company advanced it."

The test is stated as follows, page 1195:

> "The test which determines whether the real transaction between the parties was a loan or a sale is the intention of the parties and their intention is to be ascertained from the whole transaction, including the conduct of the parties as well as their written agrement. The facts as disclosed by the finding show that the real intention of the parties was to effect a loan at a rate of interest not otherwise collectable."

In re Grand Union Co., 219 Fed. 353, certiorari denied in 238 U. S. 626, and appeal dismissed in 238 U. S. 647, the corporation transferred to a credit company certain leases of personal property owned by it. The credit company claimed to have purchased the same under a contract at various discounts according to the maturity of the leases. The Court pointed out that while it will ordinarily assume, where the parties in a written contract call a transaction a sale, that they have used the term correctly and in its technical sense, yet, if the contract goes on to set out in detail the facts of the transaction which merely disclose that what the parties call a sale is in reality not a sale but a loan or bailment or mortgage, the Court must decide according to the real nature of the transaction, without regard to the terms the parties apply to it.

In the case of *In re Rogers,* 20 Fed. Sup. 120, at page 129, there is a discussion as to what a pledge is, the principal point being that one of the elements of a pledge is the sole right of the party to require the

payment of the sum for which the pledge was granted.

A debtor's note cannot be treated as collateral security for his own debt.

In the case of *Jones v. Third National Bank of Sedalia,* 13 Fed. (2d) 86, the debtor was indebted to the bank. Part of the debt was secured by Chattel Mortgages. The bank became apprehensive and the debtor gave a new note and chattel mortgage for any debts that are now owing or might be owing in the future. The first debt was paid, but the second note was retained for security for a new loan of $2400.00, for which the debtor gave a note reciting that the $5000.00 note was collateral. A further loan of $250.00 was made, but this note contained no recital of security. The bank filed its claim for the balance due on the $2400.00 and $250.00 notes and contended that its claim was secured one by virtue of the $5000.00 note. The Court said:

> "Collateral security has been defined as some security additional to the personal obligations of the borrower."

Stating that collateral security necessarily implies the transfer to the creditor of an interest in some property, or lien on property, or obligation, and stated that *a debtor's additional promises to pay cannot be treated as collateral security for his debt, unless such additional promises are themselves secured by a lien on property, or by the obligations of third persons.*

In the case of *Union National Bank v. Peoples' Savings and Trust Co.,* 28 Fed. (2d) 326, the Union Bank loaned $17,500.00 to the Jersey Cereal Food Company, which gave its judgment notes therefor. Being unable to pay, it gave its gold notes aggregating $19,000.00 to the bank as further evidence of the original loan. A receiver was appointed. The District Court allowed only the part of the claim based on the $17,500.00 notes and this was affirmed on appeal. The Court said:

> "when insolvency occurs, he (the creditor) must share pro rata with all the other creditors upon the basis of his real debt regardless of whether he holds one note or two."

An additional promise of a debtor to pay money cannot, from the very nature of the case, be treated as collateral security for his own debt.

Dibert v. D'Arcy, 248 Mo. 617 at 643, 154 S. W. 1116;

In re Waddell-Entz Co., 67 Conn. 324 at 334, 35 Atl. 257,

and the note which is security will be void.

Where personal property is transferred by a debtor to a creditor, the presumption is that the transfer is made as collateral security for the debt.

Borland v. Nevada Bank of San Francisco, 99 Cal. 89.

Strange it is in the instant case that the R. F. C. took no part in the case and made no effort to establish its position, but that on the other hand the petitioning debtor strenuously endeavors to prove that

it is indebted to the R. F. C. not for $1,000,000 but for $4,000,000.

In *Commercial Security Co. v. Holcombe,* 262 F. 657, the Court said:

> "The nature of a transaction is determined not by the name given to it by the parties, but by its operation and effect. That a transfer of paper evidencing indebtedness payable after the date of the transfer, and which does not include any interest, is not a sale, is quite obvious, when the transferer is required to pay to the transferee interest on the amount owing on such paper before anything is payable by maker, and the transferer has the right to reacquire the paper by paying to the transferee the sum it calls for the interest thereon."

Statutes are construed by the same rules as are contracts. The Court is respectfully referred to the language of the Act (Title 43, Sec. 403, U. S. C.) calling for an "application" for a loan, that its purpose is to "reduce and refinance its (the district) outstanding indebtedness", the term shall not exceed forty years, the loan shall be "secured" by obligations of the district paid by taxes, the "borrower" cannot issue further bonds (other than the refunding bonds) without the consent of the R. F. C., the "borrower" shall agree to apply a certain part of its taxes to retire the loan, and before the loan agreement is made the R. F. C. must be satisfied that an agreement has been made between the "applicant and the holders of the outstanding bonds—under which the applicant will be able to purchase or refund all or a major

part of such bonds at the price agreed". None of these things can be done by the bondholders, and therefore, the loan contracting party is the district.

The Court is referred further to the language of said Act which provides:

> "Such loan shall be subject to the same terms and conditions as loans made under Section 605 of Title 15 * * *"

This is the Reconstruction Finance Corporation Act itself. This latter Act has been construed as limiting the power of the Corporation to the making of loans, and there is nothing in the Emergency Farm Mortgage Act which would increase that power.

In *R. F. C. v. Central Republic Trust Company,* 17 F. Supp. 263, the Court said (p. 292):

> "There is no intimation of the intent (by Congress) to use the words 'loans', 'notes', and 'obligations' in any other than their usually accepted meaning."

The Court said (p. 293):

> "Plaintiff corporation (R. F. C.) was created and expressly authorized to make contracts for *loans,* and to sue and to be sued with reference thereto."

The words inserted in the parentheses are added in order to clarify the sentences.

And again the Court says (p. 293):

> "Here Congress has created a corporation, endowed it with the power of a private corpora-

tion and given it power to make contracts with reference to *loans* by it."

In the case of *Baltimore National Bank v. State Tax Commission,* 297 U. S. 209, 80 L. Ed. 850, 56 S. Ct. 417, in a decision written by Mr. Justice Cardozo, the Court discussing the capacity of the R. F. C. said:

> "Until then there was no power on the part of the Reconstruction Finance Corporation to subscribe for such shares or indeed for any others."

In the case of *Continental National Bank v. Chicago, Rock Island & Pacific Ry. Co.,* 294 U. S. 648, 79 L. Ed. 1110, 55 S. Ct. 595, the Court said:

> "The Reconstruction Finance Corporation Act creates a corporation and vests it with designated powers. Its entire stock is subscribed by the Government but it is none the less a corporation limited by its charter and by the general law."

In *U. S. v. Doherty,* 18 F. Supp. 793, the Court, in discussing F. D. I. C., says:

> "The Federal Deposit Insurance Corporation is not a corporation organized for private profit. It is financed by the government and its instrumentalities, the Federal Reserve Banks."

The R. F. C. was similarly incorporated for a public purpose, and not for private profit. The fact that such corporation is not incorporated for profit, negatives any idea that it is other than a lending agency of the United States Government to and with political subdivisions. It cannot deal in the securities of such

districts as a private owner for profit, but only holds such securities for the purpose of protecting them in carrying out the purposes and objects of the Act.

We also call to the Court's attention an Act to authorize irrigation districts to cooperate and contract with the United States Government. (Stats. 1917, p. 243.) Section 11 thereof was amended (Stats. 1933, p. 2394) to provide:

> "In addition to other powers in this act conferred, irrigation districts shall have authority to *borrow or procure* money from the United States or any agency thereof, for the purpose of *financing* or *refinancing* of the obligations of the district or the *funding* or *refunding* or *purchase* of the bonds of the district, or for any of the other purposes of the district authorized by the California Irrigation District Act, or acts amendatory thereof or supplemental thereto. As evidence of such *loan or loans* and the obligations of such district to repay the same to the United States or any agency thereof, any irrigation district, * * * may make and enter into contract or contracts with the United States or any agency thereof, as a condition or requirement to the making of such *loan or loans.* Such district may issue bonds of such district as may be required by the contract last above provided for or without such contract, containing such terms and conditions and payable in such manner and from such source or sources of income and/or revenue as may be agreed upon between * * * (them) * * * and may obligate and bind the district for the payment of such bonds according to the term thereof. * * *."

By no stretch of the imagination can this Act be interpreted as authorizing the district to enter into any other form of contract than that of a loan to the district.

FIFTH PROPOSITION: THE PLAN IS ONE FULLY EXECUTED OUT OF COURT, AND NOT PURSUANT TO THE STATUTE.

Assignment of Error No. 9 reads as follows:

> "The court erred in finding that Reconstruction Finance Corporation did not accept said plan several years ago or at any time prior to May 5, 1938, and in finding that said corporation was not nor was petitioner bound by said plan prior to the commencement of this proceeding, and in finding that said corporation is affected by said plan."

Assignment of Error No. 11 reads as follows:

> "The court erred in finding that said plan was not prepared or substantially completed or executed several years before the commencement of this proceeding, and in finding that said plan is a plan of composition pursuant to said Chapter X."

Assignment of Error No. 28 reads as follows:

> "The court erred in not holding that under the terms of California Statutes of 1937, Chapter 24, Section 19, said Reconstruction Finance Corporation and petitioner were bound by said plan of composition prior to the commencement of this proceeding and thereby said corporation is not affected by the plan referred to in this proceeding."

In the case of *In re West Palm Beach,* 85 Fed. (2d) the Court had before it a situation where the city had before passage of Section 83 carried out a plan to the extent of exchanging the securities involved, leaving, however, a minority of original bonds outstanding. The city sought, after Section 83 was enacted, to compel the minority bondholders to accept the plan.

The Court said:

> "In bankruptcy matters composition has a special meaning, to-wit, a settlement or adjustment which is enforced by the court on all creditors after its acceptance by a required majority. A proposed adjustment out of court is not a plan of composition, but it may become one by being presented to the court."
>
> "the plan with its acceptance became incapable of presentation as a composition because it has been largely executed."
>
> "The owners of these were no longer acceptors of an executory plan, but had been fully settled with under it and no longer had any direct interest in it. They could not fairly be counted as voters before the court on the propriety of the plan. Of course they would wish the nonacceptors to be forced to scale their debts as they themselves had done. They could no longer have an open mind as to whether, in the light of developments, the plan was a good one or a bad one."

Subsequent to the decision in this case Congress, in order to counteract its effect, added sub-section (j) to Section 83 providing:

> "(j) The partial completion or execution of any plan of composition as outlined in any peti-

> tion filed under the terms of this title by the exchange of new evidences of indebtedness under the plan for evidences of indebtedness covered by the plan, whether such partial completion or execution of such plan of composition occurred before or after the filing of said petition, shall not be construed as limiting or prohibiting the effect of this title, and the written consent of the holders of any securities outstanding as the result of any such partial completion or execution of any plan of composition shall be included as consenting creditors to such plan of composition in determining the percentage of securities affected by such plan of composition. As amended June 22, 1938, c. 575, 3 (b) Stat. 940."

Appellants question the power of Congress to pass such a statute—avowedly declared that what the Court decrees to be inequitable shall henceforth be considered equitable.

Be that as it may, the doctrine of *inclusio unius est exclusio alterius* will result in the conclusion that where a loan has been made, but actual securities *have not* been *exchanged,* rules of equity may still apply.

In the instant case the plan was fully carried out so far as the consenting old creditors were concerned when they deposited and were paid for their bonds, for liquidation.

If the R. F. C. be regarded as a holder of original bonds and of like standing with the appellants, then the plan was fully effected as to it when the first bankruptcy petition was filed under Section 80, for the R. F. C. on Feb. 26, 1935, accepted the plan (Tr. p. 296) in the former bankruptcy proceeding.

This question of the position of the R. F. C. is one of the most important in this appeal.

If ordinary rules of judicial interpretation are to be applied there can be no question of the outcome.

If the *result* of such interpretation is first to be scrutinized, to ascertain whether thereby Chapter IX and the general pogrom against the public creditor class is to be fully carried out, the appellants are perhaps lost anyway.

At each turn where the question of the position of the R. F. C. arises this simple question can be asked:

"What would have been the position of the R. F. C. had Congress *not* passed Section 83?"

The answer is equally simple. Unquestionably the Courts would have determined that the R. F. C. had only the rights proposed in the plan, was bound thereby, and that it was a creditor entitled to payments according to the new refunding bonds and no more.

If more evidence be required of the soundness of appellants' position, attention is directed to the acceptance of the plan in the State Court proceedings dated April 9, 1937 (Tr. p. 150) and the effect of such acceptance.

Sec. 19 of Cal. Stats. 1937, Ch. 24, provides:

> "In the event that said petition for liquidation, refinancing or readjustment is dismissed, * * * such dismissal * * * shall not affect the effectiveness of the plan with respect to the district or holders of bonds or warrants accepting the same."

Appellants submit that as a matter of fact and as a matter of *law,* the debt relief was, in effect, carried out long prior to enactment of Sec. 83 and not pursuant to the statute and that the effect of said Sec. 19 of the Irrigation District Refinancing Act is to definitely place the R. F. C. where it is not in any sense a creditor affected adversely by the plan in these proceedings.

SIXTH PROPOSITION: THE CLAIMS ARE NOT ALL OF THE SAME CLASS.

Assignment of Error No. 13 reads:

> "The court erred in holding that all of the bonds and indebtedness included in the plan of composition are of one and the same class, and are payable without preference."

Section 83 (b) requires that:

> "the judge shall classify the creditors according to the nature of their respective claims and interest: Provided, however, That the holders of all claims, regardless of the manner in which they are evidenced, which are payable without preference out of funds derived from the same source or sources shall be of one class. The holders of claims for the payment of which specific property or revenues are pledged, or which are otherwise given preference as provided by law, shall accordingly constitute a separate class or classes of creditors."

This question somewhat overlaps other questions discussed in this brief, and it will suffice therefore

to point out the separate classes of creditors as follows:

1. The R.F.C. since it is not the owner of the bonds it claims to hold, is in a separate class from the appellants. Even if it be deemed that the R.F.C. holds these bonds as collateral to a loan, inasmuch as the beneficiary or beneficial interest in the bonds must be in the district, the claim of the R.F.C. is based upon the loan and not upon the bonds.

2. The judgment holders are creditors because they hold judgments, and because these judgments are judgments against other jurisdictional persons than the bankrupt.

3. The holders of the alternative writ of mandate are creditors of a separate class because they are creditors holding a pledge or security as specific property and revenue.

4. The holders of bonds and coupons which have matured are creditors of a separate class because they are primarily the beneficiaries of the trust funds and properties. These claims are payable in the order of presentation since they should have been so paid, until the funds and properties may have been exhausted. Therefore, each bond and coupon may be in a separate class.

The R.F.C. does not claim any matured interest coupons nor does it claim to have presented any matured bonds. (Tr. p. 48.) Of these many are "outlawed".

5. The Drainage Act provides (Appendix p. 23) that the drainage bond issue is a prior lien (or claim)

to any subsequent issue. In a technical sense, perhaps, the bond issue is in itself a lien, but the intent of the statute was to give this entire bond issue a priority to subsequent issues.

State v. Forsyth (1932 Wash.), 15 Pac. (2d) 268, at 271, column 1, 170 Wash. 71.

Attorney General U. S. Webb in an opinion to the District Attorney in re the Palo Verde Act, dated March 24, 1932, No. 7977, said:

> "I concur in your opinion that the tax levied for any succeeding year, as provided in Section 28, should be applied only to the payment of the requirements of maturing installments of principal and interest for said year."

SEVENTH PROPOSITION: THE PLAN OF COMPOSITION IS NOT FAIR, EQUITABLE, OR FOR THE BEST INTERESTS OF CREDITORS, AND IT IS DISCRIMINATORY.

Assignment of Error No. 10 reads in part as follows:

> "The court erred in finding said plan of composition to be fair, equitable and for the best interests of creditors affected thereby, and in finding that it did not discriminate unfairly in favor of any creditor or class of creditors, * * *"

The plan is unfair, unjust and inequitable because:

1. The value of the land within the Palo Verde District warrants a vastly more generous payment to the bondholders. The assessed value of the land itself of the district was more than Five Million Dollars in 1927 and approximately Three Million

Dollars in 1937. (Tr. p. 258.) The appraiser for the R.F.C. placed a value on the land of seventy to eighty dollars per acre, speaking of clear and improved land. (Tr. p. 295.) This on 30,000 acres of land alone would be two and a quarter million dollars.

2. No provision is made for future prosperity of the district. Many of respondents' bonds mature far in the future, and the district may be very easily able to pay them. (A.I. No. 23, Tr. p. 346).

3. The State of California is the owner of 99.66% of the land (Tr. p. 187, 264.) It is unjust, if not unconstitutional that the state should thus be enriched. If this does not confiscate private property in public bonds to pay public debt, it would seem that whether the bondholder may or may not collect his claim from the state itself, the state may not thus void the debt.

4. It is unfair, if not unconstitutional to take the property of the bondholder who is a creditor of the public corporation, so to speak, and give it to enrich the landowner, who is the stockholder, of the corporation, so to speak. *Northern Pacific Ry. Co. v. Boyd,* 228 U. S. 482; 33 S. Ct. 554 (1913). A. of I. No. 40, Tr. p. 350).

5. It is unfair to pay to the bondholder only such amount as the banker (the R.F.C.) is willing to loan during a panic. *These* creditors are willing to loan more. They wish merely to keep their bonds.

6. It is unlawful for the district to issue new refunding bonds for the R. F. C. which would exceed 60% of the value of the bare land plus the works of

the district. Cal. Stats. 1917, page 243. Nothing, however, except the decree of the bankruptcy court, prevents these creditors from retaining bonds which may possibly exced 60% of the value of those assets.

7. The loan from the R. F. C. is for thirty-three years only. These serial bonds could have been issued for fifty years. Then years added to the life of bond issue would have netted thirty-five to forty per cent more for the bondholders. The life of the irrigation system is more than fifty years.

8. The R. F. C. has requested and received 4% interest on its alleged claim, but these respondents are denied the same consideration. (Tr. p. 277.)

9. The R. F. C. as an alleged creditor will receive 4% bonds for its claim, but these respondents must take cash at the option of the petitioner.

10. The R. F. C. will receive 100 cents on the dollar plus 4% interest for every dollar it loaned; the appellants 24 cents, without interest.

11. The holders of the private mortgage bonds (Mutual Water Co.) involved in this composition received fifty cents on the dollar of principal of their debts, but these respondents must take less than twenty-five cents on the dollar. In point of law the bondholders have a superior claim. In fact e. g., the Drainage Act, Sec. 30 (Appendix p. 23) provides that the drainage bonds are a preferred lien to any subsequent issue. Drainage bonds are held by appellants Jordan and First National Bank of Tustin.

12. Trust funds of the district, consisting of $100,000 cash on hand (Tr. p. 274,) which is already

earmarked by an alternative writ of mandate (Tr. p. 304), and which belong to them, *(Provident Land Corp. v. Zumwalt,* 85 Pac. (2d) 116, 96 C. D. 497; *McKaig v. Moutrey,* 96 C.A.D. 335; 90 Pac. (2d) 108) are taken from appellants by this decree, contrary to principles of equity if not to the Fifth amendment to the Constitution of the United States. Likewise, trust properties of this district, being all of its assets and properties on hand for the uses and purposes set forth in the respective acts under which the bonds were issued are taken from these appellants. It might have been different had annual levies of assessments not been made and the assessments not been foreclosed. Under such circumstances the rights of these creditors might not have vested, but when the district in the exercise of its public trust, took title to 99.66% of the real property in the district it holds that property not as a debtor but as a public trustee, *and no trustee, we submit, can take trust property into bankruptcy.*

13. It is unfair to deprive these respondents in these proceedings of their right to pursue the liability of the County of Riverside, of the Drainage District, and of the Levee District. This matter of vicarious liability is discussed further below.

14. It is unfair to scale down the claims of these creditors when other bond issues of the County and of the City of Blythe are not similarly scaled down. (Tr. p. 188.) County bonds have been paid 100% and although these bonds are in point of remedy superior to those of the County issues, appellants must take twenty-four cents of principal and nothing for in-

terest. (The City of Blythe bonds were bought up at an average of fifty cents on the dollar by private and voluntary agreement.

15. The plan allows the district to retain its water rights, headgates, lands, canals, and other valuable property, which properties were procured with moneys loaned by the bondholders, whereas the plan of composition was in no manner based upon any valuation for such properties. (A. of E. No. 24, Tr. p. 346.)

16. The Levee Bondholders' right to an assessment against the personal as well as real property of the landholders was not taken into consideration.[1] (A. of E. No. 38, Tr. p. 349.)

EIGHTH PROPOSITION: THE PLAN OF COMPOSITION IS NOT PRESENTED IN GOOD FAITH.

I.

Assignment of Error No. 10 reads in part:

> "The Court erred in finding * * * that the offer of the plan and its acceptance are in good faith, * * *."

The effect of good faith upon a plan of composition should be the same as the effect of fraud upon a discharge in bankruptcy. Consequently it would appear that not only should the district and its officials be free of any charge of fraud, but that all of their dealings and transactions should show them to have been unbiased, unprejudiced trustee for the bondholders as

1. The Levee bonds were collected from assessments against personal property as well as real property. See Levee Act, Sec. 10. Appendix p. 28.

well as the landowners and for the state itself. They are public officials and trustees whose duty it is to faithfully perform the obligations laid upon them by statute, and to disclose to the Court with impartiality and fairness all of the resources of the district, nor should they contrive to scheme with one creditor to defeat the rights of other creditors.

The S. E. C. is not permitted to intervene in this case as in corporate reorganizations. Surely the investigation conducted with regard to bondholders' committees and reorganizations generally as well as those pertaining to public corporations develop the need for extreme watchfulness on the part of the Court.[2]

Under these circumstances it was all the more the duty of the trial Court carefully to investigate the circumstances, as Mr. Justice Brandeis said in the case of *First National Bank v. Flershem,* 290 U.S. 504, at 525 (1934), the Court in a reorganization case stands

> "in a position different from that which it occupies in ordinary litigation, where issues are to be determined solely upon such evidence as the contending parties chose to introduce."
>
> "* * * every important determination by the court calls for an informed independent judgment; * * *".

It was held in *National Surety Company v. Coriell,* 289 U.S. 426 at 436 (1933):

> "It would be unreasonable to impose upon a few dissenting creditors the heavy financial burden of

2. See "Improvement in Federal Procedure for Corporate Reorganizations" by Hon. William O. Douglas as Chairman of the Securities and Exchange Commission, Nov., 1938, American Bar Association Journal.

making an adequate appraisal, supported by the testimony of competent experts. * * *".

There was in fact no such sort of investigation by the Court. The bondholders were given no funds or means with which to make their investigation nor was there anyone to defend or protect their interests. In fact the hearing lasted approximately an hour and consisted of the deposit in Court of a transcript of proceedings taken in a former hearing in a proceeding for the same purpose in the State Court, which petitioner has since abandoned.

A want of good faith is shown in these proceedings by the following circumstances:

1. An entire want of cooperative effort on the part of the district to lay the facts before the Court in other than a bitterly partisan spirit showing the utmost hostility towards the objectors.

2. A long list of harassments of these appellants, commencing with the filing of the first bankruptcy petition under the former Section 80, including injunctions against the prosecution of respondents' rights in the State Court, the filing of the petition under the Irrigation District Refinancing Act in the State Court, obtaining injunctions out of that Court to prevent the respondents from collecting anything upon their interest payments or bonds. In fact for a long period of years stubborn resistance at every point to the payment of anything whatever to these respondents.

3. The execution of the so-called "bastard" agreement (Tr. p. 236, Ex. 20) and what practically

amounts to connivance with and of the R. F. C. to try to establish the ownership by that agency of bonds which everyone knows and considers have been completely refinanced in order that the R. F. C. may qualify as a creditor and seek to out-vote these appellants.

4. Failure of the county and district's officers to endeavor to meet according to law the obligations to the bondholders.

5. Assisting a creditor to "buy its way into Court", contrary to principles of equity, in that petitioner aided the R. F. C. at every turn to acquire its own bonds to permit the filing of a bankruptcy petition. Such practice has been denounced in the case of *in re Hudson Coal Co.*, 22 Fed. Sup. 768 at 770.

> "Counsel for the petitioning creditors stated for the record that the petitioners purchased the unmatured bonds for the purpose of enabling them to file a petition for reorganization. In any proceeding of an equitable nature where good faith is required, parties may not purchase themselves into court. Justice, equity, and public policy prohibit this. If there were no case on the subject, this court would be obliged to decide on principle that such method of procuring the means of instituting such suit shows a lack of good faith."

6. By contributing to the alleged "purchase" price paid by the R. F. C. through the district to those who surrendered their bonds for the liquidation price offered. (Tr. pp. 170, 180-81.) $1450 was so paid. If petitioner be permitted to sustain its claim that the R. F. C. "owns" the bonds it claims, how can this contribution to the act of purchase be justified? Surely it

is not lawful for the district to thus aid one person solely to acquire bonds already issued and outstanding, from another bondholder. Most certainly there is no statute permitting such disbursement.

NINTH PROPOSITION: THE STATE AS A DEBTOR CANNOT REPUDIATE ITS OBLIGATIONS IN THESE PROCEEDINGS.

Assignment of Error No. 42 reads:

> "The Court erred in determining that by these proceedings the obligation of the State of California upon the securities affected by the plan could be voided."

In the case of *El Camino Irrigation District v. El Camino Land Corporation,* 96 C. D. 505, 508, 85 Pac. (2d) 123, 125, the Court states:

> "But the cases make a sharp distinction between municipal corporations, such as the cities in the Kubach Company and Marin Water and Power Company cases, and state agencies such as irrigation or reclamation districts. These latter are agencies of the state whose functions are considered exclusively governmental; their property is state owned, held only for governmental purposes; they own no land in the proprietary sense, * * *"

Since, therefore, the Palo Verde Irrigation District owns the title to 99.66% of the real estate within its boundaries, *the state is now in actual fact the owner of that property.*

Furthermore, that property is no longer subject to assessment and taxation for even county purposes.

This was definitely held to be so in the case of *Anderson-Cottonwood Irrigation District v. Klukkert,* 97 C. D. 348, 88 Pac. (2d) 685.

We therefore have the State of California owning the land and assets of this district, including its valuable water rights upon the Colorado River (Tr. p. 186) coming into this Court and seeking by these proceedings to destroy a public trust, which it has established by its own statutes, submitting its own governmental and fiscal affairs to the jurisdiction of this Court contrary to the very provision of Chapter IX of the Bankruptcy Act as we have shown elsewhere in this brief, and seeking thereby to repudiate its own public debt.

(These bonds bear the great Seal of the State and Certificate of the State Controller, irrevocably certifying them as lawful investments for savings banks, trust funds, and any funds that may be invested in State Bonds.)

Even in the minority opinion written by Mr. Justice Cardozo, in the case of *Ashton v. Cameron County Irrigation District,* that learned justice said:

> "There is room at least for argument that within the meaning of the Constitution the bankruptcy concept does not embrace the states themselves."

The remarks of the Chief Justice in the *Bekins* case that the new act was careful not to impinge upon the sovereignty of the State, that "the State retains control of its fiscal affairs", can only mean that the State cannot surrender its sovereignty.

TENTH PROPOSITION: THE DECREE UNLAWFULLY TAKES TRUST FUNDS AND VESTED RIGHTS BELONGING TO RESPONDENTS.

Assignment of Error No. 37 reads:

> "The court erred in approving and confirming the plan of composition without provisions for appellants' vested rights in trust funds and properties, including proceeds of assessments, tax certificates, land to which title has been taken under tax sales and proceeds thereof, the right to levying of annual assessments both in the past and future, and moneys impounded by writ or writs of mandamus heretofore issued."

1. Appellant Jordan has a judgment against the Palo Verde Drainage District and the Palo Verde Joint Levee District of Riverside and Imperial County, California. (Tr. p. 300 and pp. 315, 318.) The First National Bank of Tustin likewise has a judgment against the Drainage District. Mason would have had a judgment against the Palo Verde Joint Levee District, but for the pendency of the State Court bankruptcy proceedings. (Tr. p. 302.) While these judgments are not final because an appeal was filed and the prosecution of the appeal enjoined through action of the various bankruptcy Courts, to which petitioner has resorted, nevertheless those judgments stand with certain presumptions before this Court. A judgment is *property,* and as such is a *vested right.* These judgments constitute the judgment holders as creditors of a somewhat different class. They also are judgments against *other debtors* than the bankrupt. The release of one party to a liability does not necessarily release all

parties unless the claim is extinguished. While it may be true that a composition is an extinguishment of the debt, and might have that result, if the decree herein becomes final, such result is but a reason why appellants Jordan and First National Bank of Tustin at least are creditors of a separate class from the other appellants by reason of such judgments.

2. Each of the appellants has a vested right in the writ of mandate which was obtained from the Superior Court earmarking certain funds as trust properties belonging to them. 7 *Corpus Juris* 326; *Lawlor v. City of West Palm Beach,* 125 Fla. 626, 170 So. 697; *City and County Holding Co. v. Board of Public Instruction,* 120 Fla. 599, 603 So. 808; *City of Winter Haven v. Baynes,* 114 Fla. 522, 154 So. 870; *Ecker v. South West Tampa Storm Sewer Drainage District,* 76 Fed. (2d) 870 at 872. *Hidalgo County Road District v. Morey,* 74 Fed. (2d) 101, where the Court said:

> "A fund created pursuant to statute to be used in paying the interest and principal of bonds issued by a public body is held *in trust* for the bondholders, and a court of equity has jurisdiction to protect and enforce the rights of bondholders in such fund."
>
> *Hidalgo County Road District v. Morey,* 74 Fed. (2d) 101.

The rights against the trust fund accrue in accordance with presentations after maturity, and thus prompt presentation is important.

> "At the time when Laforge presented his warrants for payment there being money in the

treasury which had been appropriated under a previous and existing law for that purpose, his right became fixed and could not be destroyed by subsequent legislative enactment. It was the duty of the treasurer to pay the warrants at the time of their presentation and the subsequent Act of the Legislature could not intervene to divest rights already acquired."

Laforge v. MaGee, 6 Cal. 650, 651.

"The substance of the provisions of the act of 1851 is, that a sufficient sum of money to answer the purposes of that act shall be collected by taxation, and having been collected and paid to the treasurer of the corporation, *it stands as a trust fund which the treasurer, as the bailee of this sum, is to pay to the commissioners.*"

People v. Bond, 10 Cal. 563 at 573, 574.

3. All the property held by the Palo Verde Irrigation District including its funds and its tax deeded properties, constitutes trust property belonging to bondholders who hold matured obligations in the first place, and to the bondholders holding maturing bonds in the second place, as was said in the case of *Morris v. Gibson,* 88 C. A. D. 703, 89 C. A. D. 140, 87 Pac. (2d) 37, 42:

"A purchaser of bonds may and probably often does deliberately select bonds of late maturity in preference to bonds maturing at an earlier date, and having made that selection he should not be permitted, without good reason to now alter his position."

Section 46 of the Drainage Act (see Appendix) provides:

> "The following funds are hereby created and established to which the moneys properly belonging shall be apportioned by the treasurer, to-wit: bond fund, construction fund, general fund, funding fund."

Section 48 provides:

> "Upon the presentation of the coupons due to the treasurer he shall pay the same from the bond fund."

Section 29 of the Palo Verde Irrigation District Act as amended in 1927, Cal. Stats. 1927, page 972, reads as follows:

> "All moneys collected from the district, either from taxes or from any other source, shall be paid by the collector to the County Treasurer of the County of Riverside, and placed in the fund called 'Palo Verde Irrigation District Fund'. It shall be the duty of said County Treasurer, upon presentation of any matured bond or interest coupon of any bond of any of said three districts, to pay the same from said funds.'"[3]

---

3. In an opinion written by Albert Ford, District Attorney of Riverside County, dated April 17, 1930, to Miss Alice Mitchell, Riverside County Treasurer, Riverside, California, the District Attorney said: "It is my opinion that you are required to pay any matured bonds or interest coupon of any bond of any of the three districts, from the Palo Verde Irrigation District Fund, so long as there is any money in that fund; bearing in mind, however, that money in that fund that was raised to pay the bonds or interest coupons of any of the various districts can be used only for such payments. It is my suggestion that you keep a subsidiary account or accounts, which will enable you to segregate any bond or coupon money that comes into your hands and see to it that such money is applied to such bond or interest coupons to which it is applicable. If such funds prove inadequate to pay such bonds or coupons, then it is your duty, in my opinion, to use any money remaining in the fund, for the payment of any of the matured bonds or the interest coupon of any bond."

The other acts involved contain similar provisions. The California Appellate and Supreme Courts have decided in a number of cases that such funds collected constitute trust funds which belong exclusively to the particular beneficiaries of the trust. These decisions hold that assessments placed, or which should be placed in the bond fund, when collected, belong to the bondholders and that all of the properties of the district are held in trust for the benefit of the bondholders as beneficiaries of the public trust. Section 5 of the Palo Verde Irrigation District Act provides:

> "The legal title to all property acquired under the provisions of this act shall immediately, by operation of law, vest in the district, and shall be held by the district in trust for, and is hereby dedicated and set apart to, the uses and purposes set forth in this act. And said board is hereby authorized and directed to hold, use, manage, keep and possess said property as herein provided."

This is substantially the same provision as Section 29 of the California Irrigation District Act which has been interpreted by the Supreme Court in a number of cases. In the case of *Moody v. Provident Irrigation District,* 85 Pac. (2d) 128, 130, 96 Cal. Dec. 512, the Court said:

> "It is settled law that an irrigation district is a governmental agency, * * * Likewise, it is also well settled that the law in force at the time the bonds and coupons are issued by a district become a part of the contract."

"That the annual assessments and the sale of lands upon which the assessments are not paid, may never realize sufficient money to pay the indebtedness of the district, is entirely beside the question. The property of the district, so far as it owns any property, constitutes a public trust and is held by the district for a public use, and, therefore, is not subject to levy and sale upon execution by a creditor of the district."

In the case of *Clough v. Compton Delevan Irrigation District,* 85 Pac. (2d) 126, 96 Cal. Dec. 509, referring to Section 29 of the California Irrigation District Act, the Court said:

"The property is by this language impressed with a public use, and trust is for all the purposes of the act. Payment of the bondholders is such a purpose, * * * It is enough to point out that it is an active trust for public uses and purposes, and to permit partition of the lands which constitutes its corpus would mean the destruction of the trust, in violation of the statute. The same considerations of policy which make this property exempt from execution * * * are equally applicable to any attempt to take the same by partition."

In the *Provident* case the Court further said (85 Pac. (2d) 116, 118):

"The ordinary method of payment of bondholders is clearly indicated by these provisions. The directors must levy assessments in a sufficient amount to meet principal and interest payments. If delinquency occurs a higher assessment may be levied thereafter to make up the

loss, and meanwhile the district may proceed to sell the land of the delinquent owner and buy it in. If a heavy delinquency occurs, the remaining land bears a correspondingly heavy burden, for every parcel is liable ultimately for the entire bonded indebtedness, and assessments may therefore be 'pyramided' on the land which is not in default. It would ordinarily follow, however, that the land taken in by the district would be resold, and some money would be realized from the sale; and that thereafter the land thus returned to private ownership and liable again for assessments would prove a sufficient source of revenue to keep the assessments at a reasonable figure."

The Court, after discussing the result of the failure of this procedure, and remarking that these districts have long been in default in bond payments says (p. 119):

"The delinquencies have gone too far in this and other districts to save the landowners."

The Court further said (p. 120):

"the lands remain in trust, and the district exercises its powers, however broad, as a trustee. Once it is made clear that the lands are held in trust, it necessarily follows that their proceeds, whether by sale or lease, are likewise subject to the trust. It would be manifestly absurd to say that although property is held in trust, none of the benefits of the trust accrue to the beneficiaries, and that none of the rents or profits of the trust property need be used in furtherance of the trust purposes. On this point, namely, that the land

is trust property, held for the 'uses and purposes' of the act, and that the proceeds are stamped with the character of the property from which they flow, the statute, read in the light of elementary principles, leaves no room for debate."

"It next becomes necessary to determine whether payment of the bondholders is one of these purposes. * * * defendants and amici curiae vigorously contend that * * * creation of debts is not one of its purposes. * * * This type of argument, however, tends to prove too much * * * But laying aside quibbles as to the exact meaning of the phrase 'uses and purposes', it seems clear that if the district is to be created and to function on borrowed money, repayment of the money is not a wholly immaterial and foreign objective. Evading creditors is not a contemplated activity of a public district, whose bonds are recognized investments for financial institutions. Among other purposes of the act, therefore, is the repayment of the bondholders of the district, and it follows that this is one of the purposes for which the trust money is held."

"The land is the ultimate and only source of payment of the bonds. It can never be permanently released from the obligation of the bonds until they are paid * * * Any practice which removes the land from its position as ultimate security for the bonds, or which places its proceeds beyond the reach of bondholders, destroys that plan and is contrary to the spirit of the act."

See, also:

Selby v. Oakdale, 140 Cal. App. 171, 177, 35 Pac. (2d) 125;

McKaig v. Moutrey, 90 C. A. D. 335, 90 Pac. (2d) 108.

Appellants refer to the case of *Erie Railroad Company v. Tompkins,* 58 S. Ct. 817, 304 U. S. 64, holding that the Federal Court shall follow the decisions of the State Court upon questions of state law.

ELEVENTH PROPOSITION: THE LIABILITY OF THE LEVEE DISTRICT, AND OF THE DRAINAGE DISTRICT, AND OF THE COUNTY OF RIVERSIDE WAS NOT TAKEN INTO CONSIDERATION BY THE COURT.

Assignment of Error No. 27 reads:

"The court erred in not holding that some of the bonds and interest coupons held by appellants and some of the outstanding obligations of Palo Verde Irrigation District are obligations of the Palo Verde Drainage District and some are obligations of the County of Riverside, California, and some are obligations of the Palo Verde Joint Levee District of Riverside and Imperial Counties, and this court is without power or jurisdiction to consider or allow or approve any plan of composition or proceeding involving or affecting any of the said obligations of the Palo Verde Drainage District or of the County of Riverside, California, or of the Palo Verde Joint Levee District of Riverside and Imperial Counties."

The Levee District was organized under Cal. Stats. 1905, page 327. Section 10 provided that the Board of Supervisors of the county must levy a tax upon all *taxable property* in the Levee District sufficient for the levee districts' purposes. (This of course includes personal property as well as improvements upon real estate, as well as all property in the incorporated City of Blythe.) These taxes were collected at the same time and manner as county taxes. (See Appendix.)

By Section 11 of the Levee Act the Board of Supervisors is given the same control over the affairs and property of the Levee District as it has over county property.

It is to be noted too that the area of the Levee District is not identical with that of the irrigation district.

The bondholder of the Levee District, then, had under familiar principles the right to the exercise of those powers by the Board of Supervisors upon the formation of the irrigation district. Section 12 of the Irrigation Act (Appendix p. 49), preserved to the bondholder such rights as he had under the Levee Act.

Furthermore the Superior Court in Riverside County has already granted judgments against the Levee District thus determining its separate existence as an entity and party and the separate existence of rights against such entity.

The Levee District is not a party to these proceedings and it is not well seen how the District Court could wash it clean of obligations.

7 *C. J.* 409, Sec. 726:

"A discharge in bankruptcy is personal to the debtor and does not affect the liability of one who is a codebtor with, or a guarantee or a surety of, the bankrupt."

The County of Riverside had a responsibility in the matter. It may be that so long as the irrigation district under injunction of the Palo Verde Irrigation District Act performed its vicarious duty to collect upon the Levee bonds, the county's duty was performed to such extent, but for failure to perform such duty, the county is liable, not only for failure to assess the personal property as well as all taxable property, but for the collection and proper disbursement thereof.

Read v. Biczkiewicz, 18 N. E. (2d) 789 (not yet in State Reports);

Henning v. City of Caspar, 5 Wyo. 1, 57 Pac. (2d) 1264;

Cruzen v. Boise City, 74 Pac. (2d) 1037.

The Drainage District Act (see Appendix) likewise contains provisions for the proper collection of taxes and disbursement thereof so whatever conclusion is reached as to the Levee Act, applies also to the Drainage Act.

The intricacy of the accounting problem is shown by an opinion of District Attorney Ford to the Riverside County Treasurer dated April 17, 1930, wherein he advised:

"It is my opinion that you are required to pay any matured bond or interest coupon of any

bond of any of the three districts, from the Palo Verde Irrigation District Fund, so long as there is any money in that fund; bearing in mind, however, that money in that fund that was raised to pay the bonds or interest coupons of any of the various districts can be used only for such payment. It is my suggestion that you keep a subsidiary account, or accounts, which will enable you to segregate any bond or interest coupon money that comes into your hands, and see to it that such money is applied to the payment of the bonds or interest coupons to which it is applicable. If such funds prove inadequate to pay the bonds or interest coupons, then it is your duty, in my opinion, to use any money remaining in the fund, for the payment of any matured bond or the interest coupon of any bond."

No effort has been made in these proceedings on the part of petitioner to show what trust properties and funds it has belonging to the several districts whose bonds are involved. Yet it has been shown that all the *real* property within the Palo Verde Irrigation District has been sold and is held in trust by the Palo Verde Irrigation District for the various purposes of the districts.

The judgments against the Drainage and Levee Districts, the several liability of these districts, the negligence of the County of Riverside, the right to personal property tax, and the existence of trust property render it inequitable that a decree discharging the trustee, the officers of the Palo Verde Irrigation District, and the three other State agencies from further liability be rendered.

TWELFTH PROPOSITION: THE DISTRICT IS NOT AUTHORIZED BY LAW TO CARRY OUT THE PLAN.

Assignment of Error No. 10 reads:

> "The court erred in finding * * * that petitioner is authorized by law to take all action necessary to carry out the plan * * *"

The Act requires this finding:

The Supreme Court in the *Bekins* case said this provision referred to state law.

The petitioner is not so authorized because:

1. The State has not consented.

2. The Districts Securities Commission has not approved the plan adopted May 10, 1938.

3. The authority of the R. F. C. to loan further expired in 1936.

4. The people voted on a plan in June, 1934, which is fully executed.

5. The R. F. C. resolution of 1934 contains provisions which the district cannot perform, e. g., a promise not to issue other bonds.

6. The plan of composition of May 10, 1938, is not shown to be authorized by the Board of Trustees.

THIRTEENTH PROPOSITION: THE STATE HAS NOT GIVEN ITS CONSENT.

Assignment of Error No. 30 reads:

> "The court erred in holding that petitioner and its obligations are subject and amenable to the bankruptcy power of the Congress of the United States, and in holding that the State of California has consented and can consent to this proceeding, and in not holding that any purported consent of the State of California to this proceeding under the terms and provisions of California Statutes of 1934 (Extra session) Chapter 4 is unconstitutional and void in that said chapter violates the provisions of Article I, Section 16; Article IV, Section 1; Article X, Section 5; and Article XIII, Section 6 of the Constitution of the State of California, and Article I, Section 10, Clause 1 of the Constitution of the United States, and other constitutional provisions."

In the *Bekins* case Mr. Chief Justice Hughes said with reference to the question of state consent, concerning that Court's opinion that the state had given its consent:

> "we have not been referred to any decision to the contrary."

thus giving the possibility of re-examination of that question.

The Act, which was before the Supreme Court then was Cal. Stats. 1934 (Ex. Sess.), Chapter 4. This Act has been repealed by Cal. Stats. 1939, Chapter 72

since this appeal was taken. The question is, therefore, upon the effectiveness of the repealing of that Act and the consent it purports to give. The State of California by its Constitution prohibits the impairment of contract by its legislature, California Constitution, Article I, Section 16. Such consent is also an unlawful delegation of judicial power in violation of Article VI, Section 1 of the California Constitution, and of the Tenth Amendment of the Constitution of the United States. See, also, *Duffy v. Hobson,* 40 Cal. 240; *Ex parte Knowles,* 5 Cal. 300; *Pacific Coast Casualty Co. v. Pillsbury,* 171 Cal. 319.

It is also an attempted surrender of the power of taxation contrary to Article XIII, Section 6 of the California Constitution, providing that the power of taxation should never be surrendered or suspended by any grant or contract to which the State shall be a party. (*Illinois Central R. R. Co. v. State of Illinois,* 146 U. S. 387, 13 S. Ct. 110; *U. S. v. Constantine,* 56 S. Ct. 223, 296 U. S. 287; *Board of Commissioners v. State* (Okla.), 257 Pac. 778; *Nelson v. Pitts* (Okla.), 259 Pac. 533.) Where the Court held invalid a statute which provided for a sale of property for tax liens and release of the property from all liens after the sale of such property and said:

> "And to the same extent which said Chapter 212 S. L. 1923 tends to impair the obligation of contracts and extinguish vested rights, it also tends to restrict the power of the state to levy and collect taxes and to extinguish obligations due the state * * *"

It is an attempted taking of private property for the payment of public debt in violation of Article XI, Section 15 of the California Constitution.

Finally, it is an unlawful interference with trust obligations. *Provident Land Corporation v. Zumwalt,* 96 C. D. 497, 85 Pac. (2d) 116, at 120, where the Court said:

> "* * * the lands remain in trust, and the district exercises its powers, however broad, as a trustee."

Furthermore, this property is exempt from execution as held in the case of *El Camino Irrigation District v. El Camino Land Corporation,* 96 C. D. 505, 508, 85 Pac. (2d) 123. Property exempt from execution is not subject to bankruptcy, yet we have the anomalous situation that this very land which is exempt from execution is trust property belonging to the bondholders. (*McKaig v. Moutrey,* supra.) It is submitted that no public trustee can take advantage of the bankruptcy act.

FOURTEENTH PROPOSITION: THE ACT IS UNCONSTITUTIONAL IN THAT IT VIOLATES THE FEDERAL CONSTITUTION.

Assignment of Errors Nos. 39, 40, 41, and 31.

No. 39 reads: "The court erred in not holding that the plan of composition violates the Fifth amendment of the Constitution of the United States in that mortgages and other obligations, junior to those held by appellants, of petitioner, and petitioner's landowners may be paid in full

while appellants are to receive only 24.81 per cent of the principal of their holdings."

Assignment of Error No. 40 reads: "The plan further violates the Fifth Amendment of the Constitution of the United States by taking appellants' property and giving it to the landowners of petitioner's district."

Assignment of Error No. 41 reads: "The plan takes the private property of appellants to pay the public debt of the State of California, and of the County of Riverside and Palo Verde Irrigation District without just compensation."

Assignment of Error No. 31 reads: "The court erred in not holding that said Chapter IX (formerly Chapter X) of the Bankruptcy Act was and is unconstitutional and that it did not violate the following sections and clauses of the Constitution of the United States: Article I, Section 10, Clause 1, and the Fifth and Tenth Amendments."

At the time of the decision in the *Bekins* case, although it was argued that the functions of a California Irrigation District were strictly governmental, there was no final and clear decision by our Courts upon that subject. Since that time, however, the decision in the case of *El Camino Irrigation District v. El Camino Land Corporation,* 96 Cal. Dec. 505, 85 Pac. (2d) 123, and of *Anderson-Cottonwood Irrigation District v. Klukkert,* 97 C. D. 348, 88 Pac. (2d) 685, have come down, finally determining that all of the functions of an irrigation district are *exclusively governmental.* Since, therefore, the constitutionality

of Chapter IX rested in the *Bekins* case in large part upon two propositions, first non-interference with governmental functions and second consent of the State, we take it that the question of constitutionality of the Act as affecting appellants' rights should be re-examined in the light of these decisions by the California Supreme Court, relying upon the decision in the *Erie Railroad* case already discussed above.

Furthermore, in the *Bekins* case, the question of the violation of the Fifth Amendment was only before the Court in the sense of statutory violation. Now we have the *facts* and *merits* of the plan before the Court, from which it is primarily seen that the rule in the *Boyd* case, supra, is violated in that property of the senior creditor is taken and given to a junior without just compensation; and that the State now seeks to take property of the public bondholder without compensation, and takes that property to pay the state's debt; and in that the legislation is class legislation and discriminatory for inasmuch as it benefits the other debts of the same sovereign, namely, the bonds of the County of Riverside and the City of Blythe, and private mortgages on property, and increases the value of private property rights in land and buildings within the districts.

CONCLUSION.

Four other cases involving somewhat the same issues as this case, namely, *Lindsay-Strathmore Irrigation District, Merced Irrigation District, Corcoran Irrigation District* and *James Irrigation District,* are on appeal to this Court. The *Lindsay* case has been docketed and in all probability will be argued on the same calendar as this case. Several other cases involving bankruptcy petitions of irrigation districts are pending in the District Courts in California, and consequently the instant case assumes considerable importance.

As Chief Justice Terrell said in *Klemm v. Davenport,* 129 So. Rep. 904:

> "In times of stress and adversity, individuals are often required to toil through years and exercise the most rigid economy to 'pay', even though the business engaged in proved a failure. A like course of conduct is no less incumbent on a governmental entity. The very foundation of our social and economic structure is confidence, and while the demands of government on the taxpayers are burdensome, it is also true that society in turn is making unusual demands on the government. If a 'promise to pay' is no more than a 'scrap of paper', or like the apples of Sodom, fair to look on, but turn to smoke and ashes when plucked or matured, then government must cease to function and confidence becomes a mere tradition and is no longer the rock on which human relations under our form of government must rest."

We respectfully submit, based upon the points and arguments, that the decree of the District Court should be reversed.

If the decree be reversed, the district will have been 96% refinanced anyway, for all the district owes the R. F. C. is one million, not four million, dollars.

Dated, Turlock, California,
July 12, 1939.

Respectfully submitted,
W. COBURN COOK,
CHAS. L. CHILDERS,
Attorneys for Appellants.

(Appendix Follows.)

Appendix.

Appendix

IRRIGATION DISTRICT REFINANCING ACT.

(1937 CAL. STATS., CHAPTER 24.)

An act providing ways and means for liquidating, refinancing and readjusting certain indebtedness of irrigation districts in default; for judicial proceedings to carry out such purpose; for the confirmation of plans for liquidation, refinancing and readjustment; authorizing the exercise of the police power and the power of eminent domain for the acquisition and cancellation of obligations of districts held by persons not accepting such plant; declaring an emergency and the urgency hereof and providing that this act shall take effect immediately.

[Approved by the Governor March 30, A. D. 1937.]

The people of the State of California do enact as follows:

SECTION 1. Legislative Statement and Declaration of Fact, Emergency and Policy. The Legislature of the State of California does hereby find, determine and declare to exist a State emergency affecting the peace, health, safety and comfort of the people, caused by and resulting from the inability of irrigation districts formed, organized and existing under the laws of this State to consummate and complete plans for liquidating, refinancing or readjusting indebtedness of such districts, and that such emergency arises out of the following facts, to wit:

That many of such districts were organized during a rapid period of expansion and inflated values and that they issued bonds in excess of their capacity to pay. That during the period of world-wide depression many of these districts became increasingly unable to meet the obligations of their bonded indebtedness, including the payment of interest thereon, and that mounting defaults in such districts with consequent pyramiding of assessments to the point of confiscation, ever increasing delinquencies and inability to sell lands foreclosed by the districts caused a condition of chaos to exist which resulted in the enactment of Chapter 60 of the Statutes of 1933 and Chapter 36 of Statutes of 1935, commonly known as "Section 11 of the District Securities Commission Act". That this act authorized, subject to the provisions thereof, the levy of assessments during the period of the emergency thereby declared to exist, based upon the ability of the land to pay and contemplated that, with such relief, ordinary economic processes would permit such districts to rehabilitate themselves through enabling them and the bondholders in agreement to work out refinancing plans before all values within such districts should be destroyed. That after the passage of said acts districts levied assessments based on the ability of lands to pay, and commenced proceedings to work out refinancing plans with their respective bondholders. That in many of such districts refinancing plans have heretofore been accepted by an overwhelming majority of the bondholders and proceedings have been brought under

section 80 of the Bankruptcy Act of the United States to compel acceptance of such refinancing plans by small minority groups of dissenting bondholders. That recently the Supreme Court of the United States has held that such section of the Bankruptcy Act is unconstitutional in that it infringes upon the sovereignty of the States. That as a result of this decision there is now no legal procedure by which refinancing of the present bonded indebtedness of such districts may practicably be consummated. That the excessive debt burden of such districts has so increased and pyramided during the last three years, due to the inability to meet the annual debt obligations, that any present attempt to levy assessments designed to meet such obligations of such districts in full would result in overwhelming delinquencies, would prove largely uncollectible, would raise no adequate funds for bond or other debt service, and would be of no benefit to bondholders or creditors. That, unless these existing chaotic conditions are remedied, in each succeeding year an ever increasing body of lands will default in payment of assessments and will remain unredeemed therefrom. That annual assessments in each succeeding year will fall upon a progressively lessening body of land which in turn will be forced to default in greater and greater quantities. That such inevitable and wholesale conditions of default will destroy the ability of such districts to pay their bonded debts in whole or in part and to carry out the necessary public functions with which they are entrusted as governmental agencies of the State. That

on the contrary if refinancing plans now under way and accepted by overwhelming majorities of the bondholders of such districts can be effected, bondholders and creditors will be benefited, land in the districts will remain in private ownership, values will be restored and such districts will be enabled to discharge their public obligations. That the adequate credit, support and maintenance of such districts as governmental agencies of the State is a matter of vital State interest and concern; that the welfare of the State, the solvency of its banking institutions and the interests of the propery owners in, and the creditors of, such districts, all require the speedy settlement and adjustment of the debt defaults of all such districts so that the financial standing, credit and tax collecting ability thereof may be restored. Therefore, to meet this condition of emergency, the police power and the power of eminent domain are hereby invoked and such irrigation districts herein referred to are hereby authorized to institute and maintain the proceedings and actions as hereinafter set forth which are hereby declared to be for public purposes, for the preservation of government, the protection of private property and the protection of the bondholders, creditors and property owners alike of such districts to the end that the State shall aid in and assist in the solution and settlement of grave, economic and financial difficulties by providing ways and means for liquidating, refinancing and readjusting indebtedness of such irrigation districts as hereinafter set forth. This act is hereby declared to be an urgency

measure necessary for the immediate preservation of the public peace, health and safety within the meaning of section 1 of Article IV of the Constitution and shall therefore go into effect immediately. That a statement of the facts constituting such necessity is as hereinbefore set forth in this section.

SEC. 2. Application. The outstanding bond or warrant indebtedness or both or any class or classes thereof of any irrigation district organized and existing under the laws of this State and in default as to payments of principal or interest or both of any such indebtedness for a period of not less than three (3) years, or unable to pay its debts as they mature, may be liquidated, refinanced or readjusted as hereinafter provided.

SEC. 3. Acceptance of Plan by Bondholders and Warrant Holders Affected and by District. Proceedings under this act shall be instituted, except as hereinafter provided, by the adoption by the board of directors of any such district of a plan of liquidation, refinancing or readjustment of such indebtedness, or any class thereof, which plan shall theretofore have been accepted in writing or by contract by the holders of not less than two-thirds in principal amount of each class of the indebtedness affected thereby other than bonds or warrants owned or held by such district. For the purpose of accepting such plan and for all other purposes of this act, any holder of such indebtedness may act in person or by a duly authorized agent or committee. Such plan may provide for cash payments to creditors affected thereby or

include provisions modifying or altering the rights of such creditors either through the issuance of new securities of any character, or otherwise, and may contain such other provisions or agreements not inconsistent with this act as the parties may desire. No creditor shall be deemed to be affected by the plan (a) whose bonds or warrants are not affected by the plan or (b) if the plan makes provision for the payment of his bonds or warrants in cash in full.

Sec. 4. Approval by District, California District Securities Commission and Petition. Such plan shall be thereafter presented by the board of directors of any such district to the California District Securities Commission, and, if approved by such commission as being fair and equitable to the creditors affected thereby and for the best interests of such district and the landowners thereof, the board of directors may file in the Superior Court in and for the county in which such district, or the major part thereof, is located, a verified petition stating that such district is unable to meet such obligations as they mature; that it desires to effect the aforesaid plan, which said plan is filed and submitted with the petition or described therein and which said plan has been accepted by creditors as above mentioned; that such district desires to avail itself of the relief and remedies provided for by this act; and containing such other allegations as may be deemed material. Any such petition shall be accompanied by a certified copy of the resolution of the board of directors of said district adopting said plan, together

with a list of all known holders of bonds and warrants of said district to be liquidated, refinanced or readjusted as aforesaid, with their addresses so far as known to the district and a description of their respective claims so far as is known which said list shall further show separately those holders of bonds and warrants of said district who have, and who have not accepted the plan.

SEC. 5. Automatic Stay. Plan Temporarily in Effect. The filing of such petition shall operate automatically to enjoin and stay, pending final determination of the proceedings as herein set forth, the commencement or continuance of suits or proceedings against the district or any officer or board of directors thereof which would interfere with or prevent the carrying out of the plan, and shall also operate automatically to enjoin and stay the enforcement of any lien or the levy of assessments except in so far as is consistent with and in furtherance of such plan. The court in which said petition is filed shall have exclusive jurisdiction with respect to all suits, actions and proceedings against the district filing such petition or any board of directors or officer thereof on account of the indebtedness of such district proposed to be liquidated, refinanced or readjusted by such plan or to enforce any lien or the levy of any assessments for the payment of such indebtedness and all matters incidental and collateral thereto and it shall be deemed that said plan is temporarily in full force and effect. It is hereby found and declared that proceedings for or the issuance or enforcement of a writ of

mandate or other action or proceeding to enforce any lien or to enforce the levy of assessments for the payment of such indebtedness other than as provided in such plan would, during pendency of said proceeding, result in disorder and confusion and destruction of joint, relative and correlative rights of creditors affected by said plan and injury of third persons.

SEC. 6. Notice. Upon the filing of such petition the court shall set a time and place for the hearing thereof not less than ninety (90) days thereafter and the district shall give notice of said hearing as follows: Not less than thirty days' written notice of the time and place of hearing shall be personally served upon all known holders of bonds and warrants affected by the plan who are residents of the State of California and who have not theretofore accepted such plan in writing and who can be located by due diligence for such service. If such nonaccepting holders are nonresidents but are represented in mandamus suits or other litigation relating to said bonds or warrants pending in said county or in any court of California, or in the Federal courts in California, such notice may be served upon any attorney of record representing such nonresident holders and such service shall be deemed as effective as if made on such holders themselves. As to all nonaccepting holders resident or nonresident in the State of California and not personally served, the district shall publish such notice of hearing in a newspaper of general circulation published in the county in which such petition is filed at least once a

week for eight (8) successive weeks, the last publication to be not less than thirty (30) days prior to the date set for the hearing. Such notice shall also be mailed at least thirty (30) days prior to the date set for the hearing to each nonaccepting holder, postage prepaid, to his last address as, and if the same appears on the records of the district. The notice shall state that the district has filed a petition for approval of a plan to liquidate, refinance or readjust its bonded indebtedness or some class or classes thereof and/or its outstanding warrant indebtedness; it shall give the name of the court and place where such action or proceeding is pending; shall state the plan generally; that it is submitted under this statute; and that it has been accepted by the holders of at least two-thirds in principal amount of each class of the indebtedness to be liquidated, refinanced or readjusted, shall refer to the petition on file and to this law for further particulars and shall state the time and place when said petition shall come on for hearing.

Sec. 7. Plans Heretofore Accepted by Creditors and the District. In any case meeting the requirements of sections 2 and 3 hereof and where prior to the effective date of this act the plan as therein provided has been accepted in writing by the holders of not less than two-thirds in principal amount of each class of the bond or warrant indebtedness affected thereby and by such district, and been approved by the California District Securities Commission, proceedings under this act may be directly

instituted, for all purposes hereof and without further proceedings, by the filing by such district of a petition in the form provided in section 4 hereof but also alleging that the plan submitted therewith was accepted as in this section provided.

SEC. 8. Hearing on Plan. Interlocutory Judgment Confirming Plan. Dismissal. At the time and place set by the court the hearing upon said plan shall be held by said court. Said hearing, may in the discretion of the court, be continued from time to time. At any time prior to such hearing, any creditor affected by the plan may file an answer to the petition accepting the plan or controverting any of the material allegations of the petition and setting up any objections to the plan. Upon the hearing the rules and laws of practice, procedure and evidence in civil actions generally shall prevail. The court shall hear the petition and such answers or objections as may be filed and such competent and material evidence as may be offered. At the conclusion of the hearing the court shall make written findings of fact, and its conclusions of law thereon and shall enter an interlocutory judgment confirming the plan if satisfied that (1) it is fair, equitable and for the best interests of the creditors affected thereby; (2) complies with the provisions of this act; (3) has been accepted or approved in writing or by contract by the holders of not less than two-thirds in principal amount of each class of the indebtedness affected thereby as provided in section 3 hereof; (4) the offer of the plan and its acceptance are in good faith;

and (5) the district is authorized by law to take all actions necessary to be taken by it to carry out the plan. If not so satisfied as above provided, the court shall enter a judgment dismissing the proceeding. In determining whether the plan is fair and equitable as hereinbefore provided, the court shall take into consideration, together with all other relative data, whether rights and remedies of the holders of the indebtedness affected by the plan are inefficacious, uncertain or futile and whether the plan is based substantially on the measure of the ability of the district to pay. Any interlocutory judgment confirming said plan shall be conclusive evidence (a) of the public necessity of the acquisition by such district as hereinafter provided of bonds or warrants owned by holders not accepting such plan (b) that the acquisition of such bonds or warrants is necessary for the purposes of this act and (c) that such acquisition is planned in the manner which will be compatible with the greatest public good and the least private injury.

Sec. 9. Changes, Amendments and Modifications of the Plan. Before a plan is confirmed, changes, amendments and modifications may be made in the plan with the consent of creditors who have already accepted it or, with the approval of the court after hearing, upon such notice to creditors affected as the court may direct. All changes, amendments or modifications shall be subject to the right of any creditor who shall previously have accepted the plan to withdraw his acceptance within a period to be fixed by

the court and after such notice as the court may direct, if in the opinion of the court, the amendment, change or modification will be materially adverse to the interest of such creditor. If any creditor having such right of withdrawal shall not withdraw within such period, he shall be deemed to have accepted the plan as amended, changed or modified; provided, however, that the plan as amended, changed or modified shall comply with sections 2 and 3 of this act and shall have been accepted in writing by the district. If an interlocutory judgment confirming the plan is entered, the court may prescribe a reasonable time and conditions for the delivery of the money, securities or other consideration to the creditors under the terms of the plan and may, from time to time, allow additional time for such delivery or may provide for the deposit of the money, securities or other consideration within such time or extension thereof with such depositary or disbursing agent as the court may appoint.

Sec. 10. Determination of Value and Acquisition and Cancellation of Warrants or Bonds of Nonaccepting Holders. At any time prior to the entry of the interlocutory judgment as hereinbefore provided, any holder of bonds or warrants affected by said plan may file written acceptance of such plan and thereupon shall be entitled to all of the benefits thereof. Upon rendition of the interlocutory judgment, all holders of bonds or warrants affected by the plan who shall not theretofore have accepted the plan, shall be deemed to be and will be hereinafter referred to as

"nonaccepting holders" and thereafter they shall have no right to accept said plan or to avail themselves of any rights thereunder. Upon rendition of said interlocutory judgment, the court shall continue the proceeding for final hearing with respect to the value of the bonds or warrants of the nonaccepting holders as hereinafter provided. At the time set for final hearing the court shall hear such competent and material evidence as may be offered and shall proceed to determine and fix the actual value of the bonds or warrants held by nonaccepting holders and each of them respectively. Such value shall be determined by a jury unless waived by the district and the nonaccepting holders, the value of whose bonds or warrants is being fixed and determined. The value shall be fixed and determined as of the date of the filing of the petition and shall be fixed and determined in view of all the rights and remedies available to the creditors affected if their obligations were not liquidated, refinanced or readjusted and if they were relegated to their legal and equitable rights and remedies under their bonds or warrants. The intent of the Legislature herein is that the nonaccepting bond or warrant holder shall receive the full cash value of his bonds or warrants fixed and determined by conditions as they would be if the district indebtedness were not liquidated, refinanced or readjusted according to the plan approved by the court, but such values shall not be enhanced or increased by reason of any value given to bonds or warrants held by nonaccepting holders by reason of the fact that

two-thirds or more in principal amount of the creditors affected by the plan have agreed on a plan of liquidation, refinancing or readjustment or that the court has confirmed the same or that said plan has already been carried into effect in whole or in part as to accepting creditors or any of them. Evidence concerning the market value of the bonds and warrants affected by the plan and the price at which they were sold on the market, and otherwise, prior to the adoption by the district of the plan, and for a reasonable time before and after such date shall be admissible.

SEC. 11. Judgment of Acquisition, Cancellation and Condemnation. After determining the value of the bonds or warrants owned by the nonaccepting holders as aforesaid, the court shall enter a judgment of acquisition, cancellation and condemnation by said district of all bonds or warrants of nonaccepting holders for the price and at the value fixed and determined as aforesaid. After entry of the judgment as in this section provided, the district may deposit with a depositary or disbursing agent appointed by the court for the respective nonaccepting holders of bonds or warrants, the full appraised value of such bonds or warrants as fixed and determined in said judgment, together with interest at the rate of seven per cent (7%) per annum from the date of such judgment to the date of deposit in lawful money of the United States and thereupon it shall be deemed that said bonds or warrants owned by such nonaccepting holders have been finally acquired and condemned by said dis-

trict and are canceled and extinguished. Any nonaccepting bond or warrant holder may at any time withdraw the money so deposited with the depositary or disbursing agent in cancellation of his bonds or warrants respectively upon surrender to said depositary or disbursing agent of such bonds or warrants; provided, further, that the district must, on demand of any nonaccepting bond or warrant holder, deposit with such depositary or disbursing agent within not less than three months from date of entry of the judgment provided for in this section, the full amount fixed by said judgment for such nonaccepting holder respectively, together with interest as aforesaid, on condition that said creditor's demand shall be accompanied by tender for cancellation of the bonds or warrants referred to in said demand; and provided further that in any event the district must, within three months after the judgment provided for in this section shall have become final, deposit with the depositary or disbursing agent appointed by the court the sums of money fixed and determined by such judgment for all nonaccepting holders of bonds or warrants respectively, together with interest as aforesaid.

Sec. 12. Binding Effect of Interlocutory Judgment and Judgment Fixing Value of Bonds or Warrants of Nonaccepting Holders. The plan when confirmed by interlocutory judgments as provided in section 8 hereof shall be binding upon the district and all holders of bonds or warrants who have accepted the same as herein provided and the district and such accepting bondholders shall have no other or different

rights with respect to their bonds or warrants than are provided in such plan and the interlocutory judgment confirming the same. From and after the entry of the judgment provided for in section 11 hereof, the nonaccepting holders shall have no right other than to receive the cash value fixed for their bonds or warrants respectively, together with interest as hereinbefore provided.

Sec. 13. Procedure After Disbursement to Nonaccepting Holders. After the district has deposited with the depositary or disbursing agent appointed by the court the value of the bonds or warrants of the nonaccepting holders respectively as hereinbefore provided, and after any nonaccepting bond or warrant holder has received the value of his bonds or warrants as fixed by said judgment aforesaid, together with interest as aforesaid, by delivering such bonds or warrants to such depositary or disbursing agent, said bonds and warrants shall thereupon be delivered by such depositary or disbursing agent to the district for cancellation. Any funds deposited with the depositary or disbursing agent by the district and not paid to nonaccepting bond or warrant holders hereunder, shall remain with such depositary or disbursing agent for five years after said judgment has become a finality and thereupon if not paid out as hereinbefore provided shall be returned to the district as unclaimed and the bonds or warrants represented thereby shall be deemed extinguished and canceled. All fees or other expenses of the depositary or disbursing agent hereunder shall be paid by the district.

Sec. 14. The District May Borrow Money to Acquire Nonaccepting Bonds or Warrants. In order

to fully carry out the purposes of this act, the district is hereby authorized to borrow from accepting holders of bonds or warrants, or otherwise, on such terms as may be agreed upon and approved by the court, any or all funds needed for the purpose of deposit for compensation to nonaccepting holders as above provided.

SEC. 15. Further Orders of the Court. At the time of entry of judgment as hereinbefore in section 11 provided, the court shall further permanently restrain and enjoin holders of bonds or warrants affected by said plan or said judgment from instituting or further maintaining suits, actions or proceedings to enforce alleged rights or remedies other than by this act or said plan or said interlocutory judgment confirming the same is specifically granted or provided. The court may also enter judgment or order for declaratory relief in conformity with proper allegations of the petition to that end pursuant to sections 1060, 1061, 1062 and 1062a of the Code of Civil Procedure of the State of California.

SEC. 16. Appeals. An appeal may be taken by the district from any judgment or order dismissing the proceedings or by or on behalf of any creditor aggrieved from either the interlocutory judgment provided for in section 8 hereof or from the judgment fixing and determining the value of nonaccepting bonds or warrants as provided in section 11 hereof. Such appeal may be taken in the manner and as provided by law for appeal from final judgment in an equity case.

SEC. 17. Termination of Act. This act shall remain in effect only until the first day of February,

1939, provided that any district which prior to such date shall have adopted the plan as herein provided and secured the acceptance of the creditors affected thereby as herein provided and which has also complied with the provisions of section 4 hereof, may nevertheless maintain and prosecute said proceeding to a finality. Such proceeding must confirm throughout to the requirements and provisions of this act.

SEC. 18. Saving Clause. If any section, sentence, clause or part of this act is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this act. The Legislature hereby declares that it would have passed this act and each section, sentence, clause and part thereof despite the fact that one or more sections, sentences, clauses or parts thereof be declared unconstitutional.

SEC. 19. Consent of Accepting Bond or Warrant Holders Not Affected by Invalidity of any Portion of this Act or Dismissal of Petition. In the event that said petition for liquidation, refinancing or readjustment is dismissed, or that any of the provisions hereof for confirmation of the plan or acquisition of the bonds or warrants of the nonaccepting holders shall be declared invalid, such dismissal or declaration shall not affect the effectiveness of the plan with respect to the district or holders of bonds or warrants accepting the same.

SEC. 20. Short Title. This act may be known and cited as "Irrigation District Refinancing Act."

SEC. 21. Conflicting Acts Repealed. All acts or parts of acts in conflict with this act are hereby repealed.

PORTIONS OF STATUTES RELATING TO PALO VERDE DRAINAGE DISTRICT.

CHAPTER CCXXXVIII.

An act to provide for the organization and government of drainage districts, for the drainage of agricultural lands other than swamp and overflowed lands, and to provide for the acquisition or construction thereby of works for the drainage of the lands embraced within such districts.

[Approved March 20, 1903.]

The people of the State of California, represented in senate and assembly, do enact as follows:

SECTION 1. Whenever fifty or a majority of the holders of title, or evidence of title as herein provided, to agricultural lands other than swamp and overflowed lands, which are susceptible of one general mode of drainage by the same system of works, desire to provide for the drainage of such lands, they may propose the organization of a drainage district under the provisions of this act, and when so organized, such district shall have the powers, rights, and duties conferred, or which may be conferred by law, upon such drainage districts. The equalized county assessment roll next preceding the presentation of a petition for the organization of a drainage district under the provisions of this act, shall be sufficient evidence of title for the purposes of this act; *provided,* that no person who has received or acquired title to land within such proposed district for the purpose of enabling him or her to join in such petition or to become an elector of said district, shall be allowed to sign such petition or to vote at any election to be held in such district under the provi-

sions of this act. Such illegal signing, however, shall not invalidate such petition when there shall be found a sufficient number of other legal petitioners.

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SEC. 14. The board shall have the power and it shall be their duty, to manage and conduct the business and affairs of the district; make and execute all necessary contracts; to adopt a seal for the district to be used in the attestation of proper documents; provide for the payment, from the proper fund, of all the debts and just claims against the district; employ and appoint when necessary, engineers to survey, plan, locate, and estimate the cost of the works necessary for drainage and the land needed for right of way, including drains, canals, sluices, water-gates, embankments and material for construction, and to construct, maintain, and keep in repair all works necessary for the purpose of drainage. The board and its agents and employés shall have the right to enter upon any land to make surveys, and may locate the necessary drainage works and the line for any canals, sluices, water-gates and embankments, and the necessary branches for the same, on any lands which may be deemed best for such location. Said board shall also have the right to acquire, hold and possess either by donation, purchase or condemnation, any land or other property, necessary for the construction, use, maintenance, repair, and improvement of any works required for the purpose of drainage as provided herein. The board may establish equitable by-laws, rules and regulations necessary or proper for carrying on the business herein contemplated, and generally may perform all such acts as

shall be necessary to fully carry out the purposes of this act.

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SEC. 26. The legal title to all property acquired under the provisions of this act shall immediately and by operation of law vest in such drainage district, and shall be held by such district in trust for and is hereby dedicated and set apart to the uses and purposes set forth in this act. And said board is hereby authorized and empowered to hold, use, acquire, manage, occupy, and possess said property as herein provided. The said board is hereby authorized and empowered to take conveyances or other assurances for all property acquired by it under the provisions of this act, in the name of such drainage district, to and for the uses and purposes herein expressed, and to institute and maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this act, or to enforce, maintain, protect, or preserve any and all rights, privileges and immunities created by this act, or acquired in pursuance thereof. And in all courts, actions, suits, or proceedings, the said board may sue, appear, and defend in person or by attorneys, and in the name of such drainage district.

SEC. 27. For the purpose of constructing necessary conduits, drains, sluices, water-gates, embankments and all works necessary for the purpose of drainage, and acquiring the necessary property and rights therefor, and otherwise carrying out the provisions of this act, the board of directors of any such district must,

as soon after such district has been organized as may be practicable, and also whenever thereafter the construction fund has been exhausted by expenditures as herein authorized therefrom, and it is necessary to raise additional money for said purposes, estimate and determine the amount of money necessary to be raised. And thereafter said board shall immediately call a special election, at which shall be submitted to the electors of such district the question whether or not the bonds of said district shall be issued in the amount so determined. Notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notices must specify the time of holding the election, the amount of bonds proposed to be issued; and said election must be held and the result thereof determined and declared in all respects as nearly as practicable in conformity with the provisions of this act governing the election of officers; *provided,* that no informalities in conducting such an election shall invalidate the same, if the election shall have been otherwise fairly conducted. At such election the ballots shall contain the words "Bonds—Yes" or "Bonds —No," or words equivalent thereto. If a majority of the votes cast are "Bonds—Yes," the board of directors shall cause bonds in said amount to be issued; if a majority of the votes cast at any bond election are

"Bonds—No," the result of such election shall be so declared and entered of record. Whenever thereafter, a petition of the character hereinbefore provided for in this section, is presented to the board, it shall so declare of record in its minutes, and shall thereupon submit such questions to said electors in the same manner and with like effect as at such previous election.

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SEC. 30. Any bonds issued under the provisions of this act shall be a lien upon the property of the district and the lien for the bonds of any issue shall be a preferred lien to that for any subsequent issue. Said bonds, and the interest thereon, shall be paid by revenue derived from an annual assessment upon the real property of the district; and all the real property in the district shall be and remain liable to be assessed for such payments as hereinafter provided.

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SEC. 42. The board of supervisors of each county wherein is situated a district or any part thereof organized under the provisions of this act, must, annually, at the time of levying county taxes, levy a tax to be known as the "——— (name of district) drainage district tax," sufficient to raise an amount reported to them as herein provided, by the board of directors. The supervisors must determine the rate of such tax by deducting fifteen per cent for anticipated delinquencies from the total assessed value of the real property of the district within the county as it appears on the assessment roll of the county, and then dividing the sum reported by the board of directors as required

to be raised by the remainder of such total assessed value.

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SEC. 44. The provisions of the Political Code of this state prescribing the manner of levying and collecting taxes and the duties of the several county officers with respect thereto, are, so far as they are applicable and not in conflict with the specific provisions of this act, hereby adopted and made a part hereof. Such officers shall be liable upon their several official bonds for the faithful discharge of the duties imposed upon them by this act.

SEC. 45. If the district is in more than one county, the treasury of the county wherein the district was organized shall be the repository of all the funds of the district. For this purpose the treasurers of any other counties wherein is situated a portion of said district must, at any time, not oftener than twice each year, upon the order of the board of directors, settle with said board and pay over to the treasurer of the county where the district was organized, all moneys in their possession belonging to the district. Said last-named treasurer is authorized and required to receive and receipt for the same, and to place the same to the credit of the district. He shall be responsible upon his official bond for the safe-keeping and disbursement, in the manner herein provided, of these and all other moneys of the district held by him.

SEC. 46. The following funds are hereby created and established, to which the moneys properly belong-

ing shall be apportioned by the treasurer, to wit: Bond fund, construction fund, general fund, funding fund.

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SEC. 48. Upon the presentation of the coupons due, to the treasurer, he shall pay the same from the bond fund. Whenever said fund shall amount to the sum of ten thousand dollars in excess of an amount sufficient to meet the interest coupons due, the board of directors may direct the treasurer to pay such an amount of said bonds not due as the money in said fund will redeem, at the lowest value at which they may be offered for liquidation, after advertising in the manner hereinbefore provided for the sale of bonds, for sealed proposals for the redemption of said bonds. Said proposals shall be opened by the board in open meeting, at a time to be named in the notice, and the lowest bid for said bonds must be accepted; *provided,* that no bond shall be redeemed at a rate above par. In case the bids are equal, the lowest numbered bond shall have the preference. In case none of the holders of said bonds shall desire to have the same redeemed, as herein provided for, said money shall be invested by the treasurer, under the direction of the board, in United States bonds, or the bonds of the state, which shall be kept in said "bond fund" and may be used to redeem said district bonds whenever the holders thereof may desire.

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SEC. 57. The rights of way, ditches, drains, conduits, flumes, pipe lines, dams, reservoirs, pumping plants, and other property of like character belonging to any

drainage district shall not be taxed for state and county or municipal purposes.

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SEC. 90. In case there be outstanding bonds of any district desiring to take advantage of the provisions of sections 88 and 89 of this act concerning reduction of bonded indebtedness, the assent of such bondholders may be obtained to such reduction of the bonded indebtedness, in the same manner as provided in section sixty-nine of this act. If such assent is obtained in the manner therein provided, then, and in that event, such district shall be empowered to take advantage of all the provisions of said sections of this act, but not otherwise. No reduction of the bonded indebtedness, as in this act provided shall in any manner affect any order of court that may have been made, adjudicating and confirming the validity of said bonds.

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PORTIONS OF STATUTE RELATING TO PALO VERDE JOINT LEVEE DISTRICT OF RIVERSIDE AND IMPERIAL COUNTIES, CALIFORNIA.

CHAPTER CCCX

An act to provide for the formation of levee districts in the various counties of this State and to provide for the erection of levees, dikes and other works for the purpose of protecting the lands within such districts from overflow and to levy assessments to erect and construct and maintain such levees, dikes and other works and to pay the necessary costs and expenses of maintaining said districts.

[Approved March 20, 1905.]

The people of the State of California, represented in senate and assembly, do enact as follows:

SECTION 1. Whenever the board of supervisors of any county in this state shall receive a petition signed by a majority of the land owners within any portion of said county, accompanied by a deposit sufficient to cover the cost of publication of all notices required by the first two sections of this act, which said portion of said county shall be specifically described and set out by metes and bounds in said petition, asking that said portion of said county be set apart and erected into a levee district for the purpose of protecting the lands embraced in said portion of said county from overflow from any river, stream or streams, of water course, the board of supervisors shall pass a resolution signifying its intention to erect and set apart said portion of said county into a levee district, for the

purpose of protecting the lands therein from overflow and describing the exterior boundaries of the district of lands embraced therein and to be assessed to pay the damages, costs and expenses thereof. Such resolution shall also contain a notice to be published, which said notice shall be headed "Notice of intention of the board of supervisors to form a levee district," and shall state the fact of the passage of such resolution, with the date thereof, the boundaries of the district, and the statement that it is proposed to assess all properties embraced within such proposed levee district for the purpose of paying the damages, costs and expenses of erecting and repairing dikes, levees and other improvements to protect the said lands from overflow, and the necessary expenses of maintaining the said district and refer to the resolution for further particulars. Such notice to be given by the board of supervisors and signed by its clerk.

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SEC. 10. At the time when by law it is the duty of the board of supervisors of such county to fix the annual tax rate for such county, the said board of supervisors, taking as a basis the last previous report of the commissioners as hereinbefore specified, and adopted by them, for the amount of moneys necessary to be raised in said district for the purposes thereof for that year, and the valuation of the lands and improvements thereon within such district as furnished them by the county assessor, must levy a tax upon all taxable property in such levee district sufficient to raise the amount set forth in the report as made

by said commissioners and adopted by said board of supervisors. The rate of taxation shall be ascertained by deducting fifteen per cent for anticipated delinquencies from the aggregate value of the lands and improvements thereon in said district, as shown by the statement prepared and furnished to the said board of supervisors by the assessor as herein before provided, and then dividing the sum necessary to be raised in said levee district by the remainder of such aggregate assessed value as shown in said statement as furnished by said assessor. The taxes so levied shall be computed and entered on the assessment roll by the county auditor, and collected at the same time and in the same manner as state and county taxes; and when collected shall be paid into the county treasury for the use of the said levee district in which said taxes was levied. And all taxes so levied as hereinbefore provided shall be a lien upon the lands and properties in said district in the manner and with the same effect, and collected in the same way as are state and county taxes.

SEC. 11. All moneys collected from such district for such taxes, and all moneys received from any source for the benefit of such district shall be by the county treasurer placed in a fund to be called the "_____ levee district fund;" and all payments of any of the expenses of the work of improvements or other expenses of such district shall be made upon warrants drawn by the county auditor upon said fund, and paid by said treasurer, and all claims as well for the land and improvements taken or damages, as for the

charges and expenses, shall be paid as are other claims against the county and upon order of the board of supervisors, and the claims shall be itemized in the same manner as are other claims against the county.

SEC. 12. The board of supervisors of such county shall have the same supervision and the same control, and exercise the same authority, over the affairs and property of such district as are given to the said board of supervisors by law over the property and affairs of the county. No levees, dikes, or other works must be constructed or repaired except on the order of the board of supervisors, and when such repair or construction will exceed the sum of $500.00 the same must be repaired or constructed under a contract let after reasonable notice given by the said board of supervisors, by publishing said notice at least once a week for two weeks in a newspaper published and circulated in said county, and designated by said board. All bids shall be sealed; and shall be opened at the time specified in the notice, and the contract awarded to the lowest responsible bidder. The board may, however, reject any and all bids. The contract and bond for its performance must be entered into and approved by the board of supervisors; *except, however,* in cases of great emergency, by the unanimous consent of the whole board they may proceed at once to replace or repair any and all levees, dikes, or other works of whatever nature, without notice. Prior to the publication of the notice of the letting of any contract for the erection or repair of dikes, levees or other works the board of supervisors must cause to

be prepared by a competent engineer, plans, specifications, and working details of such work, which said plans and specifications shall be adopted by the board of supervisors and filed in the office of the clerk of said board, and shall be subject to inspection by any person for at least two weeks prior to the date of the letting of such contract. The board of supervisors must appoint an engineer to superintend the construction, repair or other work to be done under such plans and specifications and no claims shall be allowed for any work done under any contract let under such plans and specifications without a certificate being first filed in the office of the clerk of the board of supervisors signed by said engineer certifying that such work has been completed and constructed according to such plans and specifications, and the terms of the contract; such engineer shall be paid such compensation as may be agreed upon by said board of supervisors and such compensation shall be paid in the same manner as other claims against said district.

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CHAPTER 139.

An act authorizing levee districts of the state to incur a bonded indebtedness for the purpose of building, constructing, or repairing levees of the district; or for excavating and constructing ditches or canals of such districts; or for the purpose of acquiring rights of way for any such levees, ditches, or canals; or for any and all of said purposes.

[Approved March 8, 1911.]

The people of the State of California, represented in senate and assembly, do enact as follows:

SECTION 1. Any levee district formed or organized by or under the laws of California, may incur a bonded indebtedness for the purpose of building, constructing, or repairing the levee or levees of such district; or in excavating or constructing any ditches or canals of such district; or for the purpose of acquiring rights of way for any such levee, or ditches, or canals; or for any and all of said purposes. Such indebtedness shall be incurred in the following manner, to-wit:

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SEC. 7. The board of trustees or directors of such levee district shall, by order entered upon the minutes of said board, specify the amount of bonds which it is proposed to issue, which, in any case, shall not exceed the entire estimate of the expense of the work as planned, the rate of interest to be paid and the number of years, not exceeding twenty, the whole or any part of said bonds are to run; and said order shall further

provide for submitting the question of the issuance of said bonds to the taxpayers of the district, at an election to be called by the board for that purpose, and the words to appear upon the ballot shall be: "Bonds —Yes" and "Bonds—No," or words of similar import, together with a general statement of the amount and purpose of the bonds to be issued. Said order shall name a time and place of holding such election, which place shall be at some convenient place in the district.

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SEC. 9. The board of directors or trustees shall cause to be assessed and levied each year upon the assessable property of the district, in addition to the levy authorized for other purposes, a sufficient sum to pay the interest on outstanding bonds, issued in conformity with the provisions of this act, accruing before the next annual levy, and such proportion of the principal, that at the end of five years the sum raised from such levies shall equal at least twenty per cent of the amount of bonds issued, at the end of nine years at least forty per cent of the amount, and at and before the date of maturity of the bonds shall be equal to the whole amount of the principal; and the money arising from such levies shall be known as the bond fund, and shall be used for the payment of bonds and interest coupons, and for no other purpose whatever; and the treasurer shall open and keep in his books a separate and special account thereof, which at all times shall show the exact condition of said bond fund.

PORTIONS OF STATUTE RELATING TO PALO VERDE IRRIGATION DISTRICT.

CHAPTER 452.

An act to be known as "Palo Verde irrigation district act," creating a consolidated irrigation, protection and reclamation district, subject to the approval of the owners of property within the district, to be known as "Palo Verde irrigation district," for the purpose of taking over the water rights and water systems of the Palo Verde Mutual Water Company, a corporation, and of the stockholders thereof; the levees, properties and functions of the Palo Verde joint levee district of Riverside and Imperial counties, California; the properties and functions of the Palo Verde drainage district; and for the acquiring of such other properties, the construction of such other improvements and the doing of such other things as may be necessary for providing a unified and comprehensive method of supplying the irrigable low lands of Palo Verde valley comprised within the district with water for irrigation and domestic uses, reclaiming the swamp lands, destruction of mosquito pests, and protecting all the lands within the district, and the water system, from flood waters of the Colorado river, and for maintaining, improving, expanding and operating and governing the entire irrigation, protection and reclamation systems through a single district organization; providing also for the assumption, funding and payment of the bond and other obligations of said Palo Verde Mutual

Water Company and said levee and drainage districts, and for the issuance of bonds for all of the aforesaid purposes; and providing for the payment, funding and refunding of all such indebtedness; providing also for an election to determine whether this district shall be organized, and for the organization, management and control of the district through a board of trustees if the proposed district is organized; defining the powers and duties of the board, authorizing the district to sue and be sued, providing for the levy and collection of assessments to finance the acquisition of the properties, to carry on the construction work, maintenance and operation of the same, and for the payment of bonds and the expense of maintaining the district created hereby; providing also a means for dissolving said district.

[Approved June 21, 1923.]

The people of the State of California do enact as follows:

SECTION 1. The State of California and the people thereof are hereby declared to have a primary and supreme interest in securing to the inhabitants and property owners of the low irrigable lands within what is known as the "Palo Verde valley," in Riverside and Imperial counties, the greatest possible use, conservation and protection of the waters of the Colorado river to the extent that the same may be lawfully diverted to their lands, to the end that their water system, their land, structures and other properties may be protected

from overflow of the flood waters of said river, their swamp lands drained, and thereby the greatest productivity of the largest possible area may be accomplished and safely carried on within reasonable limits of economy.

Investigation having shown conditions in the Palo Verde valley to be peculiar to that valley, it is hereby declared that a general law cannot be applicable thereto, and the enactment of this special law is therefore necessary for the proper distribution and use of the waters available to the valley, the protection of the valley against inundation, the reclamation of the swamp lands, and financing the development of the valley by the means herein provided.

SEC. 2. There is hereby created, subject to the approval of the owners of property within the district as hereinafter provided, a unified irrigation, protection and reclamation district, to be known and designated as, "Palo Verde irrigation district," hereinafter in this act referred to as the "district," and which shall comprise all of the lands now included both within the boundaries of the Palo Verde joint levee district of Riverside and Imperial counties, California, and the Palo Verde drainage district, both of which are now in existence, and the boundaries of the district proposed to be created by this act are more particularly described as follows:

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SEC. 9. Powers and Duties of the District. The district shall have power:

1. To have perpetual succession and existence.

2. To sue and be sued in the name of said district in all actions and proceedings, in all courts and tribunals of competent jurisdiction.

3. To adopt a seal and alter same at its pleasure.

4. To take by grant, purchase, gift, devise or lease, to hold, use, enjoy, and to lease and dispose of, real or personal property of every kind within or without such district necessary to the full exercise of its powers.

5. To do and perform all other things necessary, incident or proper to carry into effect the purposes for which this district is created, and as provided by this act.

SEC. 10. Powers and Duties of the Board of Trustees. The board of trustees of the district, in addition to all other powers and duties prescribed by this act, shall have the following powers and duties:

1. To keep a record of all its proceedings and minutes of its meetings, which meetings shall be public, and all records of the district shall be open to the public for inspection during reasonable business hours.

2. To manage and conduct the business and affairs of the district; make and execute all necessary contracts; employ and appoint such agents, officers and employees as may be required, and prescribe their duties, and to discharge all employees. The board and its agents and employees shall have the right to enter upon any land to make surveys, and may locate the

necessary irrigation, protection, reclamation or other works or improvements, and the line of canals or conduits, and their incidental branches and laterals; also for the location of levees, dikes or other structures which may be deemed proper.

3. Said board shall also have the right to acquire, by purchase, lease or condemnation, or other lawful means, all lands and waters or water rights and other property necessary for construction, use, supply, maintenance, repair and improvements of any and all irrigation plants or systems under its control, or to be acquired or controlled by the district, or for the construction, use, supply, maintenance, repair or improvement of any and all levees, protection works, drainage or reclamation work under the control or to be acquired and controlled by the district, whether any such properties be in this or other states, and also where necessary or convenient in carrying out the purposes of this act, to acquire and hold the stock of other corporations, domestic or foreign, owning waters, canals, water works, franchises, concessions or rights, levees or drainage works. Said board may enter into and do all acts necessary or proper for the performance of any agreements with the United States or any state, county or district of any kind, public or private corporation, association, firm or individual, or any number of them, for the joint acquisition, construction, leasing, ownership, disposition, use, management, maintenance, repair or operation of any levees, works or other property of any kind which might lawfully be acquired or owned by the district, and may acquire the

right to store water in any reservoir or to carry water through any canal, ditch or conduit not owned or controlled by the district, and may grant to any owner or lessee, the right to the use of any water, the right to store such water in any reservoir of the district, or to carry such water through any canal, ditch or conduit of the district. And may likewise enter upon any acts necessary or proper for the performance of any agreements with the United States or any state, county, or district, corporation, firm or individual or any number of them, for the joint acquisition, construction, maintenance or repair of any levees or other protection works or drainage or other reclamation works.

4. To construct dams, reservoirs and works for the collection of water for the district, and to do any and every lawful act necessary to be done that sufficient water may be furnished to each land owner or inhabitant in the district for irrigation and domestic purposes, and may contract to supply water to any mutual water company within the district which is or may be organized to furnish water to certain specified lands within the district, provided the lands so supplied by any such mutual water company are within this district, and may contract for supplying such lands with water through such mutual water companies.

The board is authorized and empowered to take conveyances, leases, contracts or other asurances for all property acquired by it under the provisions of this act, in the name of this district, to and for the uses and purposes herein expressed, and to institute and

maintain any and all actions and proceedings, suits at law or in equity, necessary or proper in order to fully carry out the provisions of this act, and to enforce, maintain, protect or preserve any and all rights, privileges and immunities created by this act or acquired in pursuance thereof, and may appear and defend in person or by attorneys in the name of such irrigation district.

5. The legal title to all property acquired under the provisions of this act shall immediately, by operation of law, vest in the district, and shall be held by the district in trust for, and is hereby dedicated and set apart to, the uses and purposes set forth in this act. And said board is hereby authorized and directed to hold, use, manage, keep and possess, said property as herein provided. The board may determine by resolution duly entered upon its minutes, that any property, real or personal, held by such irrigation district, is no longer necessary to be held for the uses and purposes thereof, and may thereafter sell such property, and a conveyance of any property held by this district, executed by the president and secretary thereof, in accordance with the resolution of the board of trustees of such district, when sold for a valuable consideration, shall convey a good title to the property so conveyed.

6. It shall be the duty of the board of trustees to establish suitable by-laws, rules and regulations for the distribution and use of water among the owners of lands, which must be printed in convenient form for the use of the district.

7. When the board of trustees deems it advisable for the best interest of the district and the convenience of the electors thereof, it may at any time, but not less than sixty days before an election to be held in the district, divide the district into divisions or precincts for election purposes, but such divisions shall be made as nearly equal in area or population as may be practicable. The boundaries of the divisions and precincts or any subsequent changes therein must be shown on the minutes of the board. Should the district be divided into divisions or precincts by the board of trustees for the purpose of holding elections thereafter, any property owner owning property in one or more precincts or divisions, must cast the ballots represented by his respective parcels in each precinct where such parcels are situate respectively, and if any such parcel lies partly in one precinct and partly in another, he may cast the ballots represented thereby in either, but before doing so he must notify the election board in the other precinct of his intention to do so, in order that the election board may note the ballots represented by said land as having been voted.

8. After the first election of trustees held in pursuance of the provisions of this act, all subsequent regular elections shall be called annually at the times fixed for the holding of the annual election, and the trustees shall cause notice of such elections to be given for the period and in the manner hereinbefore prescribed in reference to the first election, and the trustees shall perform all the duties in respect to giving notice of the election, establishing election boards, pro-

viding the ballots and assessment roll records necessary for conducting the election, designating voting places, causing the returns to be canvassed, and the results declared, which have been imposed upon the supervisors in respect of the first election.

Likewise, the board of trustees shall perform all the acts necessary for calling and conducting special elections provided for in this act.

In all elections for trustees the persons receiving the highest number of votes shall be deemed elected for the office to be filled. If an election is not held as herein provided, then upon the filing of a petition with the secretary of the board of trustees, signed by property owners owning real property assessed upon the last preceding equalized assessment roll at not less than the aggregate of five thousand dollars, requesting that a special election be called for the election of officers, the trustees of such district shall thereupon call a special election for the election of such officers, such election to be held within not less than forty days after the filing of such petition.

Each member of the board of trustees shall qualify on or before noon of the tenth day following his election, by executing an official bond in the sum of five thousand dollars, which bond shall be approved by a judge of the superior court of Riverside county, and shall be recorded in the office of the county recorder thereof, and filed with the secretary of the board. All official bonds herein provided for shall be in the form prescribed by law for the official bonds of the county

officers, and premiums thereof may be paid by the district.

9. The board of trustees shall also have power generally to perform all other such acts as shall be necessary to fully carry out the purpose of this act.

SEC. 11. Acquiring or Controlling the Water System of the Palo Verde Mutual Water Company. As soon as may be practicable after the organization of the district, the board of trustees is empowered and it shall be its duty to take steps for the acquisition of the water rights and water system of the Palo Verde Mutual Water Company and its stockholders, in the manner authorized and provided by this section, as follows:

Subdivision 1. If after investigation and negotiations with the representatives of the Palo Verde Mutual Water Company, it is found practicable to contract for the purchase of the water rights and system of the Palo Verde Mutual Water Company, either by payment therefor in money or in bonds to be issued by this district as hereinafter provided, then a complete inventory and appraisal of all water rights and properties or property rights owned by said mutual water company shall be made up and appraised by competent engineers and appraisers selected by the parties for that purpose. But such inventory and appraisement shall comprise only the water rights and operating properties forming a part of the system or pertaining thereto. If, as a result of such negotiations, investigation and appraisement the board of trustees is able to agree with said water company upon what

they deem to be a fair valuation of said properties to be fixed as the purchase price thereof, then the proposed plan of purchase and the price agreed to be paid therefor, with the terms and manner of payment, shall be reduced to writing, duly executed by both parties, and shall constitute the basis of acquisition, and shall be carried out as agreed upon.

If, however, the trustees and said water company are unable to agree upon the price, terms or manner of purchase, the proposal to purchase may, at the option of the board of trustees, be submitted to the water commission of the State of California, for determination of the value of the property and property rights to be acquired, and the terms and manner of carrying the purchase into effect, provided the water company shall agree to such submission and to be bound thereby. If the submission is agreed upon, it shall be the duty of the water commission to cause an investigation to be made in such manner and to such extent as it may deem necessary or proper (but at the expense of the district) and may, if it deems proper to do so, have a public hearing thereon conducted at such time and place and in such manner and after such notice as may be prescribed by the commission. But the commission shall, within ninety days after notice of the agreement of submission, make findings of the reasonable and fair valuation of the properties and property rights involved, and the reasonable and proper terms upon which the purchase price shall be made, and such findings shall be binding upon the parties, and the trustees are authorized and empowered to proceed with the

necessary steps to carry into effect the purchase on those terms. But if the board of trustees and the representatives of the water company can not agree upon a submission of the same to the water commission, then the board of trustees is hereby authorized and empowered and the district is hereby granted the power to institute and maintain condemnation proceedings for the acquisition of said water rights and water system, and the acquisition of the same is hereby declared to be a beneficial public use and said district is empowered to acquire the same by proceedings in eminent domain conducted substantially in the manner provided by the general laws for the acquisition of private property for a public use by such procedure.

In the acquisition of the water rights and water system of said Palo Verde Mutual Water Company by the district, the board of trustees, in its discretion, may acquire the water rights and system, subject to whatever existing rights the stockholders or users of said water may have to have water supplied to their lands to the extent that the same is appurtenant thereto, in which event the title conveyed to the district shall be subject to such rights and the district shall assume the obligation of supplying water to such land owners to the extent of their rights and in the manner and upon the terms which such users are entitled to receive the same; but in the acquisition of the water rights and system of the Palo Verde Mutual Water Company and its stockholders, the board of trustees is, in its discretion, authorized and empowered to take over and acquire the water rights of the stockholders

as well as the property rights of the corporation, either by purchase or condemnation to the end that ultimately all waters available for supply or which may be made available for supply to the lands and inhabitants of the district may be distributed in accordance with uniform rules and regulations throughout the entire district, and all priorities or discrimination eliminated.

Subdivision 2. If after investigation and negotiation it is found feasible and practicable to acquire the ultimate ownership and control of the water rights and system of the Palo Verde Mutual Water Company and its stockholders, by taking over by purchase or otherwise, all of the outstanding stock of said corporation and through that means ultimately cause all of the water rights and system of said mutual water company to be conveyed to the district, and thereby eliminate vested rights or priorities so that the entire body of water available may be distributed under uniform regulations throughout the district, the board of trustees is hereby authorized and empowered to do and perform all things necessary for the purpose of acquiring all the stock of the stockholders of said water company, either through purchase, exchange of bonds therefor, or condemnation proceedings, and it may, with that ultimate object in view or by way of expediting or assisting in bringing about the acquisition of the water rights and plant from the corporation itself, or from the corporation and the stockholders as provided in the previous subdivision, purchase or contract to purchase, or procure options, for the whole

or any part of the stock of said mutual water company from time to time, or may institute and prosecute condemnation proceedings for that purpose until all of the stock is acquired or all of the properties of said mutual water company are acquired as hereinbefore provided; but before any stock of said company is purchased or contracted to be purchased, the question of the value thereof must be carefully investigated by the board of trustees, with the assistance of competent appraisers, and no stock shall be purchased at a price in excess of the maximum amount found by the trustees to be the reasonable and fair value thereof. But, within the price so fixed, the district through its board of trustees, may purchase or contract to purchase any part of the stock, but nothing herein contained shall in any manner impair the right of the district to maintain condemnation proceedings for the acquisition of the stock or water rights of the stockholders of said water company, at any time, and such acquisition is likewise hereby declared to be a beneficial public use.

Subdivision 3. If after negotiation and investigation or at any time it is found impracticable or inadvisable to acquire the whole or any part of the water rights and water system of the Palo Verde Mutual Water Company and its stockholders by purchase, exchange or condemnation, or pending the ultimate acquisition of the whole of the system and the water rights mentioned, then the district, through its board of trustees, is hereby authorized and empowered to take over the management, control and operation of such system and water rights by lease or contract,

upon such terms and conditions and for such period as may be agreed upon by the trustees, and said water company.

If the control and management of the system and water rights is thus taken over by the district, the same shall be operated in such manner as to conform to and respect vested rights and priorities of the stockholders or users of said water to the extent that they may be entitled to have any lands to which said waters are appurtenant, supplied with water from said system; but in so far as may be lawfully possible, all water shall be made available for distribution and shall be distributed to all lands within the district, under uniform rules and regulations and without discrimination, and the district shall be authorized and empowered to carry on all work necessary to safeguard and expand the distribution of water supply, and to protect the system against floods from the Colorado river, and to conserve and extend the beneficial use of the water to the utmost throughout the district, by reclamation, protection, or otherwise.

Subdivision 4. The use of all water required for the irrigation of lands within this district, and for domestic and other incidental and beneficial uses within the district, together with the rights of way for canals and ditches, the headworks, conduits, reservoirs and sites for reservoirs, and all other property required in full carrying out the provisions of this act, is hereby declared to be a public use, subject to the regulations and control of the state in the manner prescribed by law.

SEC. 12. Taking Over the Properties and Functions of the Palo Verde Joint Levee District. The district is authorized and empowered, through its board of trustees, to take over the properties, property rights and functions of the Palo Verde joint levee district of Riverside and Imperial counties, California, and it shall be the duty of the board of trustees to take the necessary steps for acquiring the same in the following manner:

Upon approval of the property owners, of the creation and organization of this district by a majority vote, at an election to be held for that purpose as hereinbefore provided, and as soon as the organization of the district is complete by the election and qualification of its officers, all of the levees, properties, property rights and functions of the Palo Verde joint levee district above mentioned, shall revert to and become vested in this district, but subject, however, to the rights of the holders of any and all of the bonds or other outstanding claims or evidence of indebtedness of said Palo Verde joint levee district, and the lien of all such bonds and all rights of the bondholders and creditors of said levee district shall be unimpaired and enforcible against the lands and property owners within the boundaries of said joint levee district to the same extent and in like manner as if this act had not been passed, and said district continued to exist; *but provided, however,* that all of such outstanding bonded or other indebtedness shall be assumed by this district, and the collection of principal and interest may be enforced through this district in like manner as it might

have been enforced through the joint levee district, and the board of trustees of this district is hereby authorized and empowered, and it shall be its duty to carry into effect and perform, all of the obligations undertaken by said levee district through this district, and the trustees thereof, for the assessment and collection of taxes for the payment of the principal and interest of said bonds and other indebtedness, and all other obligations and duties in every other respect provided for the protection, payment and liquidation of the principal and interest of the bonded and other indebtedness of said joint levee district.

All bondholders and creditors or other persons having rights or relations with said joint levee district or the trustees or officers thereof are hereby authorized and empowered to deal with the trustees of this district, and to enforce their rights as against this district in like manner as might be done against the joint levee district above mentioned and the trustees and officers thereof, and all notices, demands, tenders or other dealings that might have been had with said joint levee district or the trustees or officers thereof may be made to or had with the trustees of this district with the same force and effect. Likewise, all obligations or duties or indebtedness undertaken or contracted to be paid or performed by any persons, firms or corporations, to or with said joint levee district, may be enforced for or paid to this district with the same force and effect, and in like manner as undertaken to be performed for or paid to said joint levee district. And this district shall have the right to en-

force all rights or obligations which have accrued or may accrue to said joint levee district.

The trustees of this district, as soon as they qualify and are organized as hereinbefore provided, shall take over and become vested with the management of all levees, properties, records, moneys on hand or other assets of said joint levee district, and the trustees of said joint levee district shall deliver all of such property, records or other assets to the trustees of this district, and thereupon said district shall be deemed to be merged in and superseded by this district, and cease to exist except in so far as may be necessary to preserve the rights of bondholders and other creditors; *provided, however,* that all funds or properties which come into the possession or under the control of this district from said levee district shall be expended and used only in connection with the joint levee district work, and for the purposes authorized by the act under which it was created.

The title to all properties of the joint levee district and all property and other rights belonging to or existing in favor of said district are hereby vested in this district, and this district shall have the right to maintain suits or other proceedings necessary for the protection and enforcement of any of the rights of said levee district, and may be sued and shall have the right to defend in like manner as suits might have been maintained or defended if said levee district had continued to exist.

Upon the taking over of the property and affairs of said levee district, the board of trustees of this district

is authorized and empowered, and it shall be its duty, to proceed as rapidly as may be practicable with the necessary construction work for the improvement, extension and better protection and preservation of the water system, the lands and inhabitants within the district, against overflow of flood waters from the Colorado river, and to maintain and operate the same to the end of preventing if possible a repetition of the devastating floods of previous years. In that behalf and for that purpose the board is authorized to cooperate with the United States government, the government of the state of Arizona or of the State of California, or any other public agencies, departments, districts or private concerns, or individuals, in any joint project that may be undertaken for straightening or changing the course of the channel of the Colorado river or keeping the same within its levees and banks, provided the board of trustees deem it advisable to do so.

Sec. 13. Taking Over the Properties and Functions of the Palo Verde Drainage District. The district is authorized and empowered, through its board of trustees, to take over the properties, property rights and functions of the Palo Verde drainage district, and it shall be the duty of the board of trustees to take the necessary steps for acquiring the same in the following manner:

Upon approval of the property owners of the creation and organization of this district by a majority vote, at an election to be held for that purpose as herein provided, as soon as the organization of the

district is complete by the election and qualification of its officers, all of the canals, properties, property rights and functions of the Palo Verde drainage district above mentioned, shall revert to and become vested in this district, but subject, however, to the rights of the holders of any and all of the bonds or other outstanding claims or evidence of indebtedness of said Palo Verde drainage district, and the lien of all such bonds and all rights of the bondholders and creditors of said drainage district shall be unimpaired and enforcible against the lands and property owners within the boundaries of said drainage district to the same extent and in like manner as if this act had not been passed, and said district continued to exist; *but provided, however,* that all of such outstanding bonded or other indebtedness shall be assumed by this district, and the collection of principal and interest may be enforced through this district in like manner as it might have been enforced through the drainage district, and the board of trustees of this district is hereby authorized and empowered, and it shall be its duty to carry into effect and perform all of the obligations undertaken by said drainage district, and the trustees thereof for the assessment and collection of taxes for the payment of the principal and interest of said bonds and other indebtedness, and all other obligations and duties in every other respect provided for the protection, payment and liquidation of the principal and interest of the bonded and other indebtedness of said drainage district.

All bondholders and creditors or other persons having rights or relations with said drainage district or

the trustees or officers thereof are hereby authorized and empowered to deal with the trustees of this district, and to enforce their rights as against this district, in like manner as might be done against the drainage district above mentioned, and the trustees and officers thereof, and all notices, demands, tenders or other dealings that might have been made to, or had with the said drainage district or the trustees or officers thereof may be made or had with the trustees of this district with the same force and effect. Likewise, all obligations or duties or indebtedness undertaken or contracted to be paid or performed by any persons, firms or corporations, to or with said drainage district, may be performed for or paid to this district with the same force and effect, and in like manner as undertaken to be performed for or paid to said drainage district. And this district shall have the right to enforce all rights or obligations which have accrued or may accrue to said drainage district.

The trustees of this district, as soon as they qualify and are organized as hereinbefore provided, shall take over and become vested with the management of all canals, reclamation work, properties, records, moneys on hand or other assets of said drainage district, and the trustees of said drainage district shall deliver all of such property, records or other assets to the trustees of this district, and thereupon said district shall be deemed to be merged in and superseded by this district, and cease to exist except in so far as may be necessary to preserve the rights of bondholders and other creditors; *provided, however,* that all funds or

properties which come into the possession or under the control of this district from said drainage district shall be expended and used only in connection with the drainage district work, and for the purposes authorized by the law in pursuance of which it was organized.

Upon the taking over of the property and affairs of said drainage district, the board of trustees of this district is authorized and empowered, and it shall be its duty to proceed as rapidly as may be practicable, with the necessary construction work for the improvement and better drainage and reclamation of the lands and improvements within the district, and to maintain and operate the same to the end that the greatest area within this district may be rendered cultivable. In that behalf and for that purpose the board is authorized to cooperate with the United States government, the government of the state of Arizona or of the State of California or any other public agencies, departments, districts or private concerns, or individuals, in any joint project that may be undertaken for the drainage or other reclamation work for the protection or improvement of the district in so far as the board of trustees deem it advisable to do so.

Sec. 14. Extension and Improvement of Existing Levees, Drainage Canals and Water Systems. The district, through its board of trustees, is further authorized and empowered, and it shall be the duty of the trustees, as soon as may be practicable and as rapidly as funds may be available for that purpose, to proceed with the strengthening and extension of

existing levees or other works for the protection of the valley against overflow and inundation from the Colorado river; and likewise, the further extension and development of the water system to be taken over by the district, and the strengthening and improvement of its canals, laterals, head-works and distribution system generally; and also for the further construction of drainage canals and ditches and other works necessary for the drainage of the swamp and overflowed lands; also for the further protection of the inhabitants of the district and the improvement of health or other conditions in the valley to take such steps as may be necessary or proper for the elimination of mosquitos or other insect pests; *provided, however,* that no new construction work shall be contracted, nor shall any replacement or repair work be contracted, where the cost thereof will exceed three thousand dollars without first causing a description of the work to be performed, with specifications and plans to be prepared and at least ten days' notice given of an intention to contract for the work, and inviting sealed bids. Such notice must be given by publishing notice at least once during the week preceding the time for submitting bids, in a newspaper published within the district, or if none is published therein, then within the county of Riverside, State of California, as the board of trustees may direct. The work must be let to the lowest and best responsible bidder, but the trustees shall have the right to reject any and all bids; *provided, however,* that in the event the properties or inhabitants within the district, or the levees, water

system or reclamation works, or any part thereof, shall be threatened with destruction or serious damage by reason of rapid or unusual rise of water in the Colorado river, or from any other cause, and in the judgment of the board of trustees, necessity exists for immediate and prompt action, all materials may be purchased, all labor contracted or otherwise procured, and all other indebtedness may be incurred which, in the judgment of the board of trustees, may be necessary to meet the emergency, without the necessity of competitive bidding or notice, and all indebtedness thus contracted shall be a legal obligation against the district; *but provided, however,* that the determination of the board of trustees that an emergency does exist must be entered in the minutes of the board; *provided, further,* that nothing herein contained shall be construed as requiring the board of trustees to carry on any of its construction, maintenance, repair or other work through contracting or letting the same, but it shall be optional with the district, through its board of trustees, to contract all or any part of such work through competitive bidding as above provided, or the district may, through its board of trustees, employ the necessary labor and furnish the necessary materials to carry on any and all work authorized by this act, under the supervision of the board of trustees, and full power is vested in the board of trustees for that purpose; *but provided, however,* that if the trustees undertake to carry on such construction, replacement, repair or other work through its own supervision, and it becomes necessary to purchase materials or supplies

in lots of greater value than two thousand dollars, competitive bidding must be invited by like notice as hereinbefore provided with respect to the letting of contracts, and the property must be purchased from the lowest responsible bidder, but the board, however, shall have the right to reject any and all bids.

SEC. 15. Issuance of Bonds. For the purpose of acquiring the water rights and irrigation system of the Palo Verde Mutual Water Company or any other water rights or system which it may, by the trustees, be deemed advisable to acquire; for the purpose also, of strengthening, and extending the present levees, adding to and providing other levees, and for other protection work; for the purpose of maintaining, repairing and improving and extending the water system and the acquisition of further water rights, and the further development of water and improving and maintaining the system; for the purposes of maintaining, repairing, extending the drainage canals and of carrying on other reclamation work, including the destruction of pests or other nuisances incident to swamp conditions, and for the purpose of maintaining and operating the whole system of protection, irrigation and reclamation works, and for the purpose of making the necessary surveys, examinations, drawings and plans for all such work; also for the purpose of payment of principal and interest upon outstanding bonds or other obligations of the Palo Verde joint levee district of Riverside and Imperial counties, California, the Palo Verde drainage district, and the Palo Verde Mutual Water Company (if the system of said com-

pany is taken over by this district as hereinbefore authorized), or for the purpose of redeeming any or all of such bonds, or for the purpose of providing for the refunding of the same, or any part thereof; and generally, for defraying the expense of carrying all the purposes of this act into effect, the district is authorized to issue and dispose of its bonds as herein provided.

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SEC. 17. Provisions for making bonds legal investments for trust funds, etc. Whenever the board of trustees shall by resolution declare that it deems it desirable that any contemplated or outstanding bonds of said district, including any bonds authorized but not sold, shall be made available for the purposes provided for in section seven of an act of the legislature of the State of California entitled, "An act relating to bonds of irrigation districts, providing under what circumstances such bonds shall be legal investments for funds of banks, insurance companies, and trust companies, trust funds, state school funds and any money or funds which may now or hereafter be invested in bonds of cities, cities and counties, counties, school districts or municipalities, and providing under what circumstances the use of bonds of irrigation districts as security for the performance of any act may be authorized," approved June 13, 1913, as amended, the said board of trustees shall thereupon file a certified copy of such resolution with the commission created by, and provided for in, said act, which commission, and the state controller in connection there-

with, are hereby given the same power and authority in respect of the investigation and certification of bonds issued under this act as is given to them in respect of the investigation and certification of irrigation district bonds by said act, as amended, except as the same may be limited by, or inconsistent with, any provision of this act, and bonds of said district which have been so investigated and certified and declared to be legal investments for the purposes stated in said act approved June 13, 1913, as amended, may be lawfully purchased or received in pledge for loans by savings banks, trust companies, insurance companies, guardians, executors, administrators, and special administrators, or by any public officer or officers of this state or of any county, city, or city and county, or other municipal or corporate body within this state having or holding funds which they are allowed by law to invest or loan; *provided, however,* that where said commission has passed upon one issue of bonds of said district, all subsequent issues of said district shall be submitted to said commission as in the said act provided.

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SEC. 24. Paid by Annual Assessment. All bonds issued and the interest thereon shall be paid from revenue derived from an annual assessment upon the land within the district and the improvements thereon, and all said properties within the district shall be and remain liable to be assessed for such payment, as hereinafter provided, in so far as any bonds created or authorized under the provisions of this act are concerned; but with respect to all bonds that have been

issued and sold, or which may hereafter be sold, of the said Palo Verde joint levee district and the Palo Verde drainage district, the interest and principal thereof shall be paid from revenue derived from the annual assessment upon the properties within the boundaries of said respective districts, which are taxable therefor under the provisions of said bonds and the acts in pursuance of which they were created.

* * * * * * *

SEC. 26. Estimate of Annual Money Requirements of the District. The board of trustees of the district shall each year before the first day of September, and at such other times as the boards of supervisors of the counties of Riverside and Imperial may deem advisable, cause to be prepared and submitted to said boards of supervisors of the counties of Riverside and Imperial, a detailed statement showing the estimated amount of money that will be required for the purpose of payment of the interest payments or installments of principal to become due, upon any of the outstanding bonds of the Palo Verde joint levee district of Riverside and Imperial counties, California, or the Palo Verde Mutual Water Company (should the system of that company be taken over and any of its bonds assumed by this district), or the Palo Verde drainage district, or the bonds of this district, and also a detailed statement of the amount necessary to maintain, repair and operate the levees, water works, or reclamation works, or the maintenance, upkeep or operation of any other works under the control of the district, and likewise to defray the expenses of ad-

ministering or conducting the affairs of the district, and of carrying into effect the purposes of this act during the forthcoming fiscal year. The statements of the interest payments to become due upon the bonds of this district, the levee district, and the drainage district, or other bonds assumed by this district, as well as the expenditures necessary for the levee protection work, drainage or reclamation work constructed by said respective districts shall all be separately stated. Should the board of trustees of the district fail to furnish such statement, it shall nevertheless be the duty of the boards of supervisors of said counties to ascertain the amount required to meet interest and installments of principal which will accrue during the forthcoming year, as well as such payments as may have accrued and remain unpaid, and assess and collect said amount as herein provided.

SEC. 27. Assessed Property. It shall be the duty of the county official of Riverside county having custody of the assessment roll of said county, and likewise the duty of the county official having custody of the assessment roll of Imperial county at the times herein mentioned, to furnish to the board of supervisors of their respective counties, on or before the first day of September of each year after the formation of this district, and at such other times as the board of trustees of this district shall require, a detailed statement showing the total assessed value of all real property, with the improvements thereon, within the boundaries of this district, to be taken from the last preceding equalized assessment roll for

their respective counties, and said statement shall indicate what part of said total assessed valuation applies to lands with the improvements thereon within the boundaries of the Palo Verde joint levee district of Riverside and Imperial counties, but not within the boundaries of the Palo Verde drainage district; and likewise what part of said total valuation applies to lands within the Palo Verde drainage district, but not included within the boundaries of the Palo Verde levee district. Said statement shall also indicate the value of all personal property assessable within said joint levee district, and any and all other data necessary to enable the board of supervisors of their respective counties, or the board of trustees of this district, to fix the tax rate or to levy such assessments upon the taxable property within all said districts which may be taxable therefor under the provisions of this act, or the acts under which said joint levee district and drainage district were organized.

Sec. 28. Annual Tax Levy. At the time when by law it is the duty of the board of supervisors of each of said counties to fix the annual tax rate for said respective counties of Riverside and Imperial, the said boards of supervisors taking as a basis the last previous report of the board of trustees of the estimated amount to be required to be raised for the forthcoming fiscal year and valuation of the lands and improvements thereon within the district, as provided them by said county official having custody of said assessment rolls, must levy a tax upon all of the lands, with the improvements thereon, in the district suffi-

cient to raise the amount set forth in the report as made by said board of trustees as aforesaid, but in levying said tax, a rate shall be fixed for raising the amount to meet the principal and the accrued interest on the outstanding bonds of the said Palo Verde joint levee district, and the amount necessary for the maintenance, repair and operation of the levees constructed by said levee district, based upon the assessed value of the lands within the boundaries of said district, and a separate rate for the raising of money necessary to meet accrued installments of principal and interest on the bonds of the said drainage district, estimated amount for maintenance, repair and operating the drainage or reclamation systems installed or constructed by that district, and a separate rate also for raising the amount necessary to meet installments of principal and interest accruing on the bonds of this district, and all other expenses incident to the purpose of this district, and the taxes shall be spread over the land of this district in such manner as that all lands comprised within the boundaries of all three districts, shall be assessed at the total of the three rates added together, and the lands within the drainage district, but not within the levee district, shall be assessed at the rate applicable to this district plus the rate applicable to the drainage district, and all lands within the levee district but not within the drainage district shall be assessed at the sum of the rate applicable to the levee district and to this district, but all properties acquired by this district after its organization, and all construction work or im-

provements in the way of providing, maintaining and operating water works, protection work or reclamation work in the entire district shall be deemed to be, and is hereby declared to be for the benefit of all lands within the district, and the cost thereof shall be apportioned and raised by taxation uniformly over the entire district in accordance with the assessed valuation of the real estate and improvements thereon within the district.

In ascertaining the rate of taxation fifteen per cent shall be deducted from the aggregate value of the lands and improvements within the district, as shown by the statement prepared and furnished to said boards of supervisors by the assessors, or other county official, as hereinbefore provided, for anticipated delinquencies, and then the sums necessary to be raised shall be divided by the remainder of such aggregate assessed value as shown in said statements furnished by said officers. The taxes so levied shall be copied and entered on the assessment role by the proper county officers and collected at the time and in the same manner as county taxes; and when collected shall be paid into the county treasury for the use of the district. All taxes so levied as herein provided shall be a lien upon the lands and properties in said district in the manner and with the same effect and collected in the same way as are county taxes.

Sec. 29. Disbursement of District Funds. All moneys collected from the district, either from taxes or from any other source, shall be deposited with the county treasurer of the county of Riverside and placed

in a fund to be called "The Palo Verde irrigation district fund." It shall be the duty of the county treasurer of Imperial county, as funds derived from the collection of taxes levied by virtue of this act upon the property within this district located in Imperial county, are paid over to him by the tax collector of said county, to transmit the same to the county treasurer of Riverside county to be deposited by said last named treasurer in the fund above mentioned, but the county treasurer of Imperial county shall not be required to transmit said funds as they accumulate oftener than every thirty days. All payments required to be made by the district in pursuance of this act shall be made upon warrants drawn by the county auditor upon said fund and based upon itemized requisitions signed by the president and secretary and one member of the board of trustees other than the president and secretary, and paid by the treasurer, but accurate account shall be kept by the board of trustees of the amount of funds on hand applicable to the particular purpose for which taxes have been levied, or bonds sold, and no disbursement from the fund shall be made for any purpose in excess of the amounts authorized for such purpose, and each requisition shall show on its face the account to which the same is chargeable. Upon the requisition of the board of trustees the auditor is authorized to draw a warrant from time to time in favor of the district for the purpose of providing an emergency fund for the payment of emergency expenses, and the treasurer is authorized to pay such warrant, but the trustees shall cause the same to be deposited in a reputable

bank to the credit of the district, and such fund may be disbursed on checks in the name of the district signed by the president and secretary and countersigned by one member of the board of trustees in addition to the president and secretary for emergency purposes; *but provided, however,* that the amount on deposit in that fund shall never exceed five thousand dollars, and an itemized statement of the disposition of the same shall be made at least every thirty days, verified by the oath of the president and secretary and filed with the county auditor of Riverside county; *and provided, further,* that the board of trustees shall at all times keep in force a good and sufficient indemnity bond executed by a reputable corporation authorized to engage in the business of executing fidelity bonds in the State of California in an amount to be fixed by the board of trustees.

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SEC. 39. Bonds Exempt from Taxation. Any and all bonds issued under the provisions of this act are hereby given the same force, value and use as bonds issued by any municipality, and shall be exempt from any taxation within the State of California.

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SEC. 53. Provision for Funding Outstanding Bonds. At the time fixed for the levying of assessments for other purposes authorized by this act, there shall be levied an assessment sufficient in amount to pay the principal and interest then due and unpaid on any bonds issued for funding purposes as herein provided, and also the amount to become due on any

such bonds during the year following such levy. The assessment so levied shall be computed and entered in the assessment roll in the same manner, and shall be collected at the same time and in the same manner as other assessments authorized by this act, and when collected shall be paid to the county treasurer of the county of Riverside for the purposes herein authorized. All provisions of this act relating to the collection of assessments shall be applicable to the assessments levied under this provision.

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SEC. 56. Bonds Are a Lien on Property. Any bonds issued under the provisions of this act shall for funding or refunding purposes, be a lien upon the real property of the district, and said bonds and the interest thereon shall be paid by revenue derived from an annual assessment upon the real property of the district and improvements, and all such property in said district shall be and remain liable to be assessed for such payments as hereinbefore provided.

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SEC. 59. Tax Levy to Pay Interest and Principal. The board of trustees shall cause to be assessed and levied each year upon the real property and the improvements thereon in the district, in addition to the levy authorized for other purposes, a sufficient sum to pay the interest on or principal of such refunding bonds in the same manner as provided in this act relating to the levy and collection of assessments for other purposes.

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CHAPTER 51.

An act to amend the act entitled "An act to be known as 'Palo Verde irrigation district act,' creating a consolidated irrigation, protection and reclamation district, subject to the approval of the owners of property within the district, to be known as 'Palo Verde irrigation district,' for the purpose of taking over the water rights and water system of the Palo Verde Mutual Water Company, a corporation, and of the stockholders thereof; the levees, properties and functions of the Palo Verde joint levee district of Riverside and Imperial counties, California; the properties and functions of the Palo Verde drainage district; and for the acquiring of such other properties, the construction of such other improvements and the doing of such other things as may be necessary for providing a unified and comprehensive method of supplying the irrigable low lands of Palo Verde valley comprised within the district with water for irrigation and domestic uses, reclaiming the swamp lands, destruction of mosquito pests, and protecting all the lands within the district, and the water system, from flood waters of the Colorado river, and for maintaining, improving, expanding and operating and governing the entire irrigation, protection and reclamation systems through a single district organization; providing also for the assumption, funding and payment of the bond and other obligations of said Palo Verde Mutual Water Com-

pany and said levee and drainage districts, and for the issuance of bonds for all of the aforesaid purposes; and providing for the payment, funding and refunding of all such indebtedness; providing also for an election to determine whether this district shall be organized, and for the organization, management and control of the district through a board of trustees if the proposed district is organized; defining the powers and duties of the board, authorizing the district to sue and be sued, providing for the levy and collection of assessments to finance the acquisition of the properties, to carry on the construction work, maintenance and operation of the same, and for the payment of bonds and the expense of maintaining the district created hereby; providing also a means for dissolving said district," approved June 21, 1923, as amended, by amending sections numbered 8a, 10, 26, 28, 28h, 28j, 28k, 28l, 28m, 28n, 28o, 29, 56, 59, and 64 thereof and by repealing section 28e thereof and by adding thereto new sections, to be numbered and providing as follows, to wit: section 10a, relating to rates of tolls and charges and section 28½o, relating to partial redemption from delinquent assessments, and declaring same an urgency measure.

Sec. 10*a*. The board of trustees shall have the right to establish penalties and restrictions upon the excessive and wasteful use of water, for the purpose of conserving the water of said district and for the

purpose of preventing injury to the lands of said district. For said purposes and/or likewise for the purpose of defraying any or all of the expenses or obligations of said district or for which said district may be liable, the board of trustees may in lieu (either in part or in whole) of levying the taxes as in this act provided for, fix rates of toll and charges for irrigation and other public uses declared by this act, and collect the same from all persons using water for irrigation and domestic use and/or from all persons owning or possessing land within said district which may be entitled to water for irrigation or entitled to such other public uses, and, upon order of said board, may be made payable only in case of delivery of water in excess of a specified quantity of water per unit of land. Such tolls or charges may be levied and fixed (either in part or in whole)on the basis of the assessed value of land within the district (exclusive of improvements) as shown on the last preceding equalized assessment roll of the district, or otherwise as the board shall provide. If such tolls and charges are fixed and levied upon any other basis than in accordance with the use of water, the board of trustees shall provide for a hearing upon the manner, rate and amount of such tolls and charges and shall give notice thereof and of the time and place of said hearing by publication once a week for two weeks in a newspaper published in said district, or if there be none, in the county of Riverside. The said hearing may be held on or after ten days from the first publication. Such tolls or charges shall be payable in cash and may by the board of trustees be made payable either at one time or in installments

to the district tax collector separately from taxes and in such manner as the board of trustees may provide, or said board of trustees may make the same payable with either or both of the installments of annual taxes levied by the district. Whenever any tolls or charges have been established by the board of trustees, said board may make the same payable in advance, either at one time or in installments, and may refuse to furnish water unless such tolls or charges are paid in advance. Any such tolls or charges not by order or resolution of said board made payable with district taxes, remaining unpaid at the time specified for the delivery of the next ensuing assessment roll to the collector of the district may, by order of said board, be added to and become a part of the annual assessment upon the land upon which such tolls or charges are unpaid. Such unpaid tolls and charges shall be payable with and as a part of the first installment of said assessment, or equally with both installments as the board may order, but no allowance or deduction shall be made on account of such unpaid tolls or charges in levying the tax provided for in section 28 hereof.

All amounts added to the assessment roll under the provisions hereof shall be collected at the same time, with like effect and in like manner, with the said installment or installments of district taxes.

Sec. 28. On or before the first Monday after the eighteenth day of August of each year the board of trustees, taking as a basis the detailed statement required in section 26 of this act and the valuation of the lands and improvements thereon within the dis-

trict and the personal property within said levee district in accordance with the district assessment roll, must levy a tax sufficient to raise the amount set forth in said detailed statement, which tax shall be levied as follows:

1. A rate shall be fixed for raising the amount necessary to meet the principal and the accruing interest on the outstanding bonds of said levee district, which said rate shall be levied upon and in accordance with the assessed value of the lands, improvements and personal property within the boundaries of said levee district.

2. A separate rate shall be fixed for raising the amount necessary for the maintenance, repair and operation of the levees constructed by said levee district, which said rate shall be levied upon and in accordance with the assessed value of the lands, improvements and personal property within the boundaries of said levee district.

3. A separate rate shall be fixed for raising the money necessary to meet the principal and accruing interest on the bonds of said drainage district, which said rate shall be levied upon and in accordance with the assessed value of all lands within said drainage district.

4. A separate rate shall be fixed for raising the amount necessary for maintenance, repair and operation of the drainage and reclamation system installed or constructed by said drainage district, which said rate shall be levied upon and in accordance with the assessed value of all lands within said drainage district.

5. A separate rate shall be fixed for raising the amount necessary to maintain, repair and operate the irrigation system of the district, which said rate shall be levied upon and in accordance with the assessed value of all lands within the boundaries of this district.

6. A separate rate shall be fixed for raising the amount necessary to meet the principal and accruing interest on the bonds of this district, which said rate shall be levied upon and in accordance with the assessed value of all lands and improvements thereon within this district.

7. A separate rate shall be fixed for raising all other amounts set forth in said detailed statement required in section 26 of this act, which said rate shall be levied upon and in accordance with the assessed value of all lands and improvements thereon within this district.

There shall be four funds of said district kept by the county treasurer: the levee district bond and interest fund; the drainage district bond and interest fund; the irrigation district bond and interest fund; and the general fund. Moneys collected from the levies for principal and accruing interest on the bonds of the levee district, drainage district and irrigation district shall be placed in the appropriate funds and used only for said respective purposes. All other moneys collected from the other levies shall be placed in the general fund.

All properties acquired by this district after its organization and all construction work and improvements in the way of providing, maintaining and oper-

ating protection work or reclamation work in the entire district shall be deemed to be and are hereby declared to be for the benefit of all lands and improvements within the district and the cost thereof shall be apportioned and raised by taxation uniformly over the entire district in accordance with the assessed value of the real estate and improvements thereon within the district, but all construction work and improvements in the way of maintaining and operating the irrigation system in the entire district shall be deemed to be and are hereby declared to be for the benefit of all lands (excluding improvements) within the district and the cost thereof shall be apportioned and raised by taxation uniformly over the entire district in accordance with the assessed valuation of the lands (excluding improvements) within the district.

In ascertaining the above mentioned rates of taxation, fifteen per cent shall be deducted for anticipated delinquencies from the aggregate value of the property to be levied on in respect to each separate rate, as shown by the assessment roll of the district, and then the sum necessary to be raised shall be divided by the remainder of the proper aggregate assessed value. The secretary of the board must forthwith compute and enter in a separate column of the assessment roll the respective sums in dollars and cents to be paid on the respective properties therein enumerated.

Sec. 28*o*. A redemption of the property sold may be made by the owner, or any party in interest, within three years from the date of the sale, or at any time thereafter before a deed has been made and deliv-

ered. Redemption must be made in gold and silver coin; *provided,* that such redemption may also be made in whole or in part in warrants of the district, drawn by the auditor of said Riverside county prior to the first day of July, 1931, as to taxes levied prior to the year of 1930.

Warrants so received shall be canceled, and wherever necessary partial payment thereof may be endorsed thereon.

On receiving the certificate of sale, the county recorder must file it and make an entry in a book similar to that required of the collector. On presentation of the receipt of the collector of the total amount of the redemption money, the recorder must mark the word "redeemed," the date and by whom redeemed on the certificate and on the margin of the book where the entry of the certificate is made. If the property is not redeemed within the time herein provided, the collector, or his successor must make to the district a deed of the property, reciting in the deed substantially the matters contained in the certificate, and that no person redeemed the property during the time allowed by law by its redemption. The title acquired by the district may be conveyed by deed, executed and acknowledged by the president and secretary of the board of trustees, or said property may be sold on contract, with deferred payments, similarly executed and acknowledged; *provided,* that authority so to convey or contract must be conferred by resolution of the board, entered in its minutes, fixing the price and terms at which such sale or contract may be made, and for the purpose of

making such sales or contracts the district may employ an agent or agents; *and provided, further,* that property sold to the district for delinquent taxes may be redeemed as herein provided at any time before the district has disposed of the same.

Sec. 29. The collector shall deposit in the name of the district at least weekly in a reputable bank or banks in Riverside county all moneys for tolls or charges collected by him and originally made payable separately from taxes. Any portion of said tolls or charges originally made payable separately from taxes and collected for the purposes of paying principal or interest on bonds of the Palo Verde irrigation district, Palo Verde joint levee district or Palo Verde drainage district shall be forwarded by him to the county treasurer of Riverside county, as required in connection with tax moneys. All other portions of said tolls or charges originally made payable separately from taxes and collected shall be retained in said bank accounts and be used for the purposes for which they were collected upon order of the board of trustees and on checks in the name of the district signed by the president, vice-president, secretary, assistant secretary, superintendent and general manager or any two of said officers thereunto duly authorized by the board of trustees. The collector shall deposit daily in a reputable bank in Riverside county all moneys received by him for taxes and from tolls or charges which were originally made payable together with taxes to be placed in an account which shall only be drawn on by his checks payable to the county treasurer of Riverside county. All

moneys collected from the district, from taxes and from tolls or charges originally made payable together with taxes, shall be paid by the collector to the county treasurer of the county of Riverside and placed in the appropriate fund or funds in the name of the Palo Verde irrigation district. It shall be the duty of said county treasurer, upon presentation of any matured bond or interest coupon of any bond of any of said three districts, to pay the same from the appropriate fund. It shall be the duty of the county treasurer of Imperial county, if and when any funds derived from the collection of taxes collected by the county tax collector of said county under the provisions of section 28*a* of this act, upon any property within the district located in Imperial county, are paid over to him by the tax collector of said county, to transmit the same to the county treasurer of Riverside county, to be deposited by said last named treasurer in the appropriate fund or funds above mentioned. The county treasurer of Imperial county shall not be required to transmit said funds as they accumulate oftener than every thirty days. All payments required to be made by the district in pursuance of this act, except as herein otherwise provided, shall be made upon warrants drawn by the county auditor upon the appropriate fund and based upon itemized requisitions signed by the president and secretary or assistant secretary and one member of the board of trustees other than the president and secretary, and paid by the treasurer, but accurate account shall be kept by the board of trustees of the amount of funds on hand applicable to the particular

purpose for which taxes have been levied, or bonds sold, and each requisition shall show on its face the account to which the same is chargeable. The said auditor shall not become personally liable for the drawing of any warrant by reason of the fact that funds may not have been provided to pay the same.

Upon the requisition of the board of trustees, the auditor is authorized to draw a warrant from time to time, in favor of the district, for the purpose of providing an emergency fund for the payment of emergency expenses, including payrolls and current petty expenses, and the treasurer is authorized to pay such warrant, but the trustees shall cause the same to be deposited in a reputable bank to the credit of the district, and such fund may be disbursed on checks in the name of the district, signed by the president, vice-president, secretary, assistant secretary, superintendent and general manager, or any two of said officers as may be authorized by resolution of the board of trustees; *but provided, however,* that the amount on deposit in said emergency fund shall never exceed five thousand dollars, and an itemized statement of the disposition of same shall be made at least every thirty days, verified by the oaths of the president and secretary, and filed with the county auditor of Riverside county; *and provided, further,* that the board of trustees shall at all times keep in force a good and sufficient indemnity bond, executed by a reputable corporation authorized to engage in the business of executing fidelity bonds in the State of California, in an amount fixed by the board of trustees.

§ 403. Refinancing agricultural improvement districts; loans by Reconstruction Finance Corporation authorized

The Reconstruction Finance Corporation is authorized and empowered to make loans as hereinafter provided, in an aggregate amount not exceeding $125,000,000, including commitments and disbursements heretofore made to or for the benefit of drainage districts, levee districts, levee and drainage districts, irrigation districts, and similar districts, mutual nonprofit companies and incorporated water-users' associations duly organized under the laws of any State or Territory, and to or for the benefit of political subdivisions of States and Territories which have or propose to purchase or otherwise acquire projects or portions thereof devoted chiefly to the improvement of lands for agricultural purposes. Such loans shall be made for the purpose of enabling any such district, political subdivision, company, or association (hereafter referred to as the "borrower") to reduce and refinance its outstanding indebtedness incurred in connection with any such project; or, whether or not it has any such indebtedness, to purchase, acquire, construct, or complete such a project or any part thereof, or to purchase or acquire additional drainage, levee, or irrigation works, or property, rights, or appurtenances in connection therewith, and to repair, extend, or improve any such project or make such additions thereto as are consonant with or necessary or desirable for the proper

functioning thereof or for the further assurance of the ability of the borrower to repay its loan: Provided, That the terms of this section shall not permit additional or new land to be brought into production outside of the present boundaries of any established or reorganized irrigation district. Such loans shall be subject to the same terms and conditions as loans made under section 605 of Title 15; except that (1) the term of any such loan shall not exceed forty years; (2) each such loan shall be secured by bonds, notes, or other obligations which are a lien on the real property within the project or on the assessments, taxes, or other charges imposed by the borrower pursuant to State law, or by such other collateral as may be acceptable to the Corporation; (3) the borrower shall agree not to issue during the term of the loan any other bonds so secured except with the consent of the Corporation; (4) the borrower shall agree, insofar as it may lawfully do so, that so long as any part of such loan shall remain unpaid the borrower will in each year apply to the repayment of such loan or to the purchase or redemption of the obligations issued to evidence such loan, an amount equal to the amount by which the assessment, taxes, and other charges collected by it exceed (a) the cost of operation and maintenance of the project, (b) the debt charges on its outstanding obligations, and (c) provisions for such reasonable reserves as may be approved by the Corporation; and (5) in the case of a loan to reduce or refinance its outstanding indebtedness, the borrower shall

agree, to the satisfaction of the Corporation, to reduce, insofar as it lawfully may, the annual taxes, assessments, and other charges imposed by it for or on account of the project by an amount proportional to the reduction in the corresponding annual requirements for principal and interest of its outstanding indebtedness by reason of the operation of this section. No loan shall be made under this section until the Reconstruction Finance Corporation (A) has caused an appraisal to be made of the property securing and/or underlying the outstanding bonds of the applicant, (B) has determined that the project of the applicant is economically sound, and (C) in the case of a loan to reduce or refinance the outstanding indebtedness of an applicant, has been satisfied that an agreement has been entered into between the applicant and holders of its outstanding bonds or other obligations under which the applicant will be able to purchase or refund all or a major portion of such bonds or other obligations at a price determined by the Corporation to be reasonable after taking into consideration the average market price of such bonds over the six months' period ending March 1, 1933, and under which a substantial reduction will be brought about in the amount of the outstanding indebtedness of the applicant. When application therefor shall have been made by any such district, political subdivision, company, or association any loan authorized by this section may be made either to such district, political subdivision, company, or association or to the holders or repre-

sentatives of the holders of their existing indebtedness, and such loans may be made upon promissory notes collateraled by the obligations of such district, political subdivision, company, or association or through the purchase of securities issued or to be issued by such district, political subdivision, company, or association. (May 12, 1933, c. 25, Title II, § 36, 48 Stat. 49, as amended June 16, 1933, c. 101, § 19, 48 Stat. 308; June 19, 1934, c. 653, § 11, 48 Stat. 1110; June 27, 1934, c. 851, 48 Stat. 1269; June 22, 1936, c. 702, §§ 1, 2, 49 Stat. 1818.)

LEGAL OPINION OF O'MELVENY, MILLIKIN & TULLER.

"Los Angeles, August 30, 1918.

Gentlemen:

Responding to your request that we advise you as to the method to be followed under the law to provide funds to pay the principal and interest of bonds proposed to be issued by the Palo Verde Joint Levee District of Riverside and Imperial Counties in the amount of $1,285,951.86, and which were authorized at an election held in said District January 30, 1918, we beg to advise you as follows:

These bonds are to be issued under the provisions of an Act of the Legislature of this State approved March 9, 1911, and amended by an act approved May 22, 1917. Section 9 of said act, as amended, contains provisions providing for the raising of money to pay the principal and interest of the bonds. We quote therefrom as follows:

> 'In the event the said district comprises land situated in more than one county, then said estimate shall be furnished to the board of supervisors of each of the counties within which said lands of said district are situated. In such case at the time when by law it is the duty of the board of supervisors of said respective counties to fix the annual tax rate of each county, it shall be the duty of the board of supervisors of each of said counties respectively to levy a tax upon the taxable property in such levee district as may be situated in said county for the interest and redemption of said bonds, and such tax must not be less in the aggregate than sufficient to pay the

interest on said bonds for that year and such portion of the principal as is to become due during such year, and such portion of the principal that at the end of ten years the sum raised from such levies shall equal at least twenty-five per cent of the amount of bonds issued, at the end of twenty years at least fifty per cent of the amount, and at and before the date of maturity of the bonds, shall be equal to the whole amount of the principal, and the money arising from such levies shall be known as the bond fund and shall be used for the payment of bonds and interest coupons and for no other purpose whatever. The county treasurer of each county shall open and keep in his book a separate and special account which shall at all times show the exact condition of such bond fund. Such tax *shall be levied on all property in the territory* comprising the district situated in said county, *and shall be collected at the same time and in the same manner and form as county taxes are collected,* and when collected shall be held by the treasurer of each of said counties. Upon the first days of January, April, July and October of each year succeeding the date of issuance of said bonds, the county treasurer of each county, other than the county wherein the larger portion of the lands of said district is situated, shall transmit to the county treasurer of the county in which the larger portion of the lands of said district is situated all sums then in his possession in said bond fund, and the county treaurer of the county in which the larger portion of the lands of said district is situated shall issue his receipt therefor. Such taxes *shall be a lien upon all the property within the territory comprising the district, and of the same*

force and effect as other liens for taxes, and the collection of said taxes shall be enforced by the same means and in the same manner as provided by law for the enforcement of liens for county taxes.'

The estimate to be furnished to the board of supervisors set forth in the first part of the quotation above set out, is an estimate certified by the board of trustees of the district to the respective boards of supervisors each year, stating the amount of interest upon all outstanding bonds to grow due within the year and the amount of moneys necessary to redeem any or all outstanding bonds that may grow due in said year.

You will observe that, generally speaking, the law provides for the raising of money to pay the principal and interest of the bonds of this character by a levy upon taxable property within the district. It would probably be of interest to you also to know, if you are not already advised thereof, that the act above referred to, as amended, contains the further provision that all bonds issued by such a district shall have *'the same force, value and use as bonds issued by any municipality and shall be exempt from all taxation within the State of California'*, and it is further provided by the act that the bonds shall have 'all the qualities of negotiable paper under the law merchant'.

We believe the foregoing covers your inquiry.

Very truly yours,

O'Melveny, Millikin & Tuller,

By Henry J. Stevens."

FINAL OPINION.

"Los Angeles, May 21, 1926.

Subject: Palo Verde Irrigation District Bonds, 1925—First Issue.

Messrs. J. R. Mason & Co.,
San Francisco, California.

Messrs. Alvin H. Frank & Co.,
Los Angeles, California.

Gentlemen:

We have examined at your request, and at the request of the Palo Verde Irrigation District, certified copies of the proceedings covering the formation of the Palo Verde Irrigation District of the State of California, and also covering the bond issue by said District in the amount of $3,287,000 designated as "First Issue", and sale to you of $38,000 of bonds of said First Issue. We have also examined supplementary documents furnished us and executed Bond No. 2107 of said issue. We have further examined the decision of the Supreme Court of the State of California in the case of Barber v. Galloway, 68 C. D. 437. Said $38,000 of bonds are issued pursuant to an election held August 28, 1925, and consist of 38 bonds, each of the denomination of $1,000, and are dated September 1, 1925, and bear interest at the rate of six per cent per annum, payable on January first and July first of each year. Said $38,000 of bonds are numbered and mature as follows:

Numbers Inclusive:	Maturities:
715 - 719,	July 1, 1945;
1610 - 1627,	July 1, 1949;
2102 - 2111,	July 1, 1951;
3150 - 3154,	July 1, 1955.

From this examination we are of the opinion that the proceedings have been taken in accordance with the laws and constitution of the State of California, and that said $38,000 of bonds having been executed by the proper officials and delivered to and paid for in the manner provided by law, constitute in your hands the legal and binding general obligations of said Palo Verde Irrigation District, and that said bonds shall be payable from ad valorem taxes upon all of the lands with the improvements thereon in said Palo Verde Irrigation District and said taxes will be of equal importance and priority as a lien upon said lands and improvements thereon as general county taxes.

O'Melveny, Millikin, Tuller & MacNeil,
By (Signed) Paul E. Schwab.

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